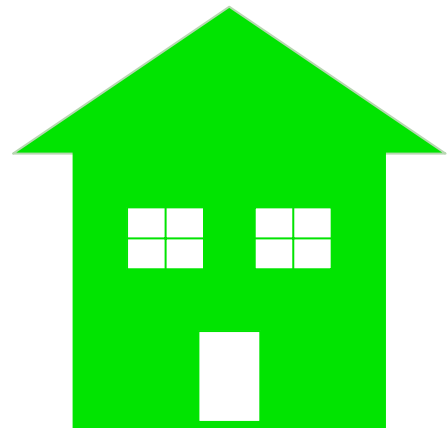
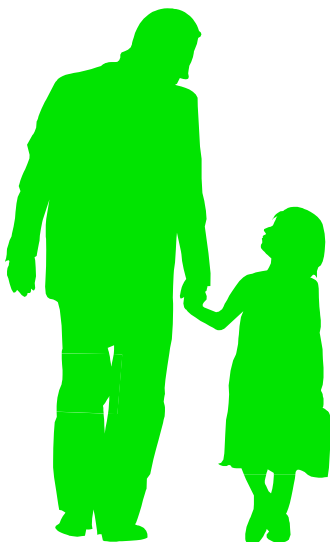


LAWYER-GUARDIAN AD LITEM PROTOCOL

Revised Edition

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Lawyer-Guardian ad Litem Protocol

1. Introduction

The lawyer-guardian ad litem's role within an adversarial system is unique. The lawyer-guardian ad litem (L-GAL) is responsible both for protecting the legal rights of his or her client—an independent and equal party in the proceedings—and for serving as an independent voice for what is in the client's best interests. A L-GAL must know the applicable law and be familiar with a wide array of non-legal issues that arise in child protective proceedings. Being part of the adversarial process but at the same time apart from it, the L-GAL has some obligations to the client that are very similar to the obligations imposed on the lawyers for the adversaries, and some obligations that are entirely different. The child's lack of legal competence further complicates the situation. In 1998,¹ because of its concern for the protection of children who are abused or neglected by their parents, the Michigan Legislature enacted a statute that delineates the role and responsibilities of the L-GAL. This statute, MCL 712A.17d, read in conjunction with other statutes, court rules, case law, and the Michigan Rules of Professional Conduct, gives guidance to lawyers who are appointed to this important role. This protocol is intended as another tool to help assure competent, effective representation in every case in which the court appoints a L-GAL.

The Advisory Committee for this protocol recognizes that the fees paid by courts to L-GALs and the services that courts will pay the L-GAL to perform vary throughout Michigan, and that many feel that L-GALs are not fairly compensated. The Advisory Committee also recognizes, however, that a court's policy with regard to L-GAL fees does not alter or abrogate a L-GAL's

¹MCL 712A.17d was amended in 2004. 2004 PA 475 addressed many of the issues discussed in the first edition of this protocol, which was published in 2003. This revised edition incorporates the amendments to MCL 712A.17d made by 2004 PA 475.

responsibilities under MCL 712A.17d. This protocol is intended to help L-GALs comply with MCL 712A.17d; it contains recommendations by the Advisory Committee for reasonable compliance with that statute. Any deviation from the explicit language of the statute should be read only as an Advisory Committee recommendation. Most importantly, the Advisory Committee recognizes the invaluable service to the child, court, and community that L-GALs provide.

Depending upon the circumstances of the case and available resources, several representatives of the child or the court may be appointed. The following definitions are provided to help distinguish between a L-GAL and other representatives of the child or court who may be appointed by the court in a case:

- ▶ **Lawyer-guardian ad litem:** A lawyer-guardian ad litem must be appointed for a child in every child protective proceeding instituted under the Juvenile Code.² The lawyer-guardian ad litem has some responsibilities derived from the attorney-client relationship, and some responsibilities that are derived from the guardian ad litem's position. A L-GAL's purpose is to determine and advocate for a child's best interests. The L-GAL's powers and duties are explained in this protocol.
- ▶ **Attorney:** In addition to appointment of a L-GAL, an "attorney" may be appointed to represent a child's expressed wishes where the L-GAL's determination of the child's best interests conflicts with the child's expressed wishes. The procedure for appointing an "attorney" is discussed in this protocol. "'Attorney' means, if appointed to represent a child in a [child protective proceeding under the Juvenile Code], an attorney serving as the child's legal advocate in a traditional attorney-client relationship with the child, as governed by the Michigan rules of professional conduct. An attorney . . . owes the same duties of undivided

² MCL 712A.13a(1)(g), MCL 712A.17c(7), and MCL 722.630.

loyalty, confidentiality, and zealous representation of the child's expressed wishes as the attorney would to an adult client.”³

- ▶ **Court Appointed Special Advocate:** If available in the jurisdiction and appropriate in a given case, the court may appoint a Court Appointed Special Advocate or CASA. A CASA is a volunteer who investigates the child's circumstances and makes recommendations to the court concerning the best interests of that child. A CASA does not need to be an attorney. A CASA must maintain regular contact with the child, investigate the background of a case, collect information regarding the child, provide written reports to the court and parties before a hearing, and testify when requested by the court.⁴
- ▶ **Guardian ad litem:** Like a CASA, a guardian ad litem (GAL) may be appointed to investigate the child's circumstances and make recommendations to the court regarding the child's best interests. A guardian ad litem's duty is to the court, not the child. “Guardian ad litem’ means an individual whom the court appoints to assist the court in determining the child's best interests. A guardian ad litem does not need to be an attorney.”⁵

2. Protocol Contents

This protocol describes the authority and responsibilities under MCL 712A.17d of the Juvenile Code of a L-GAL appointed to represent a child in child protective proceedings. A L-GAL must be appointed for a child who is the subject of child protective proceedings.⁶ A L-GAL may be appointed in guardianship proceedings, proceedings under the Safe Delivery of Newborns Law, and

³ MCL 712A.13a(1)(c).

⁴ MCR 3.917.

⁵ MCL 712A.13a(1)(f).

⁶ MCL 712A.17c(7) and MCL 722.630.

child custody proceedings, and MCL 712A.17d also applies to L-GALs appointed in those proceedings.⁷ A L-GAL's role in those specific proceedings may differ from the L-GAL's role in child protective proceedings.

This protocol contains the following parts:

A. Text of MCL 712A.17d. The complete text of MCL 712A.17d, the statute that contains the duties and authority of L-GALs. The statute also provides for appointment of an attorney to advocate for a child's expressed wishes where the L-GAL's determination of the child's best interests and the child's determination of his or her own interests conflict.

B. Discussion. This portion of the protocol contains a discussion of the duties and authority of L-GALs under MCL 712A.17d. It contains sections on the role of the L-GAL, explaining that role to the child, conducting an independent investigation of the facts of the case, duties pertaining to hearings in the case, and determining and advocating for the child's best interests. Throughout the discussion, the reader will find recommendations of the Advisory Committee intended to facilitate reasonable compliance with the dictates of MCL 712A.17d, including the requirements for meeting with or observing the child and reviewing the case file. Statutes, court rules, ethics rules and opinions, and case law relevant to performance of a L-GAL's duties are also noted.

C. Appendixes. Attached to this protocol are the following materials intended to

⁷ MCL 700.5213(5), MCL 700.5219(4), MCL 712.1(2)(i), MCL 712.2(1), and MCL 722.24(2). In guardianship and custody proceedings, a L-GAL may file with the court a written report and recommendation, which may only be admitted into evidence upon stipulation of all parties. The parties may also use the report and recommendation at a settlement conference.

provide further information and guidance for L-GALs and courts:

- ▶ *Appendix A:* a list of state and federal statutes, federal regulations, court rules, case law, and other resources relevant to the L-GAL's role in child protective proceedings.
- ▶ *Appendix B:* SCAO Form JC 82, Affidavit of Service Performed by Lawyer-Guardian ad Litem. A L-GAL must submit this form to the court to receive payment.
- ▶ *Appendix C:* the Forensic Interviewing Protocol, produced by the Governor's Task Force on Children's Justice and the Family Independence Agency (now the Department of Human Services [DHS]).
- ▶ *Appendix D:* a "Foster Parent Review Hearing Report," from Charlevoix and Emmet Counties, used to report information gathered during meetings between a L-GAL and foster parent.
- ▶ *Appendix E:* a "Qualified Protective Order" from Marquette County, which is used to give a L-GAL authority to consent to release of records concerning his or her client, or to consent to an examination or treatment of his or her client.
- ▶ *Appendix F:* Donadio & Wilen, "Applying the Realities of Child Development to Legal Representation: A Quick Reference for Lawyers and Judges," 3 *Mich Child Welfare L J* 2 (1999).

3. Text of MCL 712A.17d

"MCL 712A.17d. Lawyer-guardian ad litem's duty; powers

"(1) A lawyer-guardian ad litem's duty is to the child, and not the court. The lawyer-guardian ad litem's powers and duties include at least all of the following:

- (a) The obligations of the attorney-client privilege.

(b) To serve as the independent representative for the child's best interests, and be entitled to full and active participation in all aspects of the litigation and access to all relevant information regarding the child.

(c) To determine the facts of the case by conducting an independent investigation including, but not limited to, interviewing the child, social workers, family members, and others as necessary, and reviewing relevant reports and other information. The agency case file shall be reviewed before disposition and before the hearing for termination of parental rights. Updated materials shall be reviewed as provided to the court and parties. The supervising agency shall provide documentation of progress relating to all aspects of the last court ordered treatment plan, including copies of evaluations and therapy reports and verification of parenting time not later than 5 business days before the scheduled hearing.

(d) To meet with or observe the child and assess the child's needs and wishes with regard to the representation and the issues in the case in the following instances:

(i) Before the pretrial hearing.

(ii) Before the initial disposition, if held more than 91 days after the petition has been authorized.

(iii) Before a dispositional review hearing.

(iv) Before a permanency planning hearing.

(v) Before a post-termination review hearing.

(vi) At least once during the pendency of a supplemental petition.

(vii) At other times as ordered by the court. Adjourned or continued hearings do not require additional visits unless directed by the court.

- (e) The court may allow alternative means of contact with the child if good cause is shown on the record.
- (f) To explain to the child, taking into account the child's ability to understand the proceedings, the lawyer-guardian ad litem's role.
- (g) To file all necessary pleadings and papers and independently call witnesses on the child's behalf.
- (h) To attend all hearings and substitute representation for the child only with court approval.
- (i) To make a determination regarding the child's best interests and advocate for those best interests according to the lawyer-guardian ad litem's understanding of those best interests, regardless of whether the lawyer-guardian ad litem's determination reflects the child's wishes. The child's wishes are relevant to the lawyer-guardian ad litem's determination of the child's best interests, and the lawyer-guardian ad litem shall weigh the child's wishes according to the child's competence and maturity. Consistent with the law governing attorney-client privilege, the lawyer-guardian ad litem shall inform the court as to the child's wishes and preferences.
- (j) To monitor the implementation of case plans and court orders, and determine whether services the court ordered for the child or the child's family are being provided in a timely manner and are accomplishing their purpose. The lawyer-guardian ad litem shall inform the court if the services are not being provided in a timely manner, if the family fails to take advantage of the services, or if the services are not accomplishing their intended purpose.

(k) Consistent with the rules of professional responsibility, to identify common interests among the parties and, to the extent possible, promote a cooperative resolution of the matter through consultation with the child's parent, foster care provider, guardian, and caseworker.

(l) To request authorization by the court to pursue issues on the child's behalf that do not arise specifically from the court appointment.

“(2) If, after discussion between the child and his or her lawyer-guardian ad litem, the lawyer-guardian ad litem determines that the child's interests as identified by the child are inconsistent with the lawyer-guardian ad litem's determination of the child's best interests, the lawyer-guardian ad litem shall communicate the child's position to the court. If the court considers the appointment appropriate considering the child's age and maturity and the nature of the inconsistency between the child's and the lawyer-guardian ad litem's identification of the child's interests, the court may appoint an attorney for the child. An attorney appointed under this subsection serves in addition to the child's lawyer-guardian ad litem.

“(3) The court or another party to the case shall not call a lawyer-guardian ad litem as a witness to testify regarding matters related to the case. The lawyer-guardian ad litem's file of the case is not discoverable.”

4. **Role of the L-GAL**

Nature of the representation. A L-GAL's duty is to the child, not the court. A L-GAL owes the child the duties of competent and zealous representation⁸ that an attorney owes to an adult

⁸ See *In re Shaffer*, 213 Mich App 429, 436 (1995) (under a previous version of MCL 712A.17c(7), a child who is the subject of a child protective proceeding is entitled to zealous

client. A L-GAL's duties, like those of any attorney, include a duty to investigate the facts of the case, appear at hearings on the client's behalf, and examine witnesses. The child is entitled to the effective assistance of counsel.⁹ Failure to comply with statutory and other requirements may result in sanctions.¹⁰

However, as noted in the introduction to this protocol, the L-GAL's role is unique. A L-GAL is required to serve as the independent representative of the child's best interests, not as the representative of the child's wishes or preferences. Although the L-GAL is required to consider the child's wishes and preferences when determining the child's best interests, the L-GAL is not bound by them as in the traditional attorney-client relationship. Nonetheless, to the extent possible, the L-GAL must maintain a normal attorney-client relationship with the child. If there is a conflict between the child's expressed wishes and the L-GAL's perception of what is in the child's best interests, the L-GAL should notify the court, and the court may appoint an additional "attorney" who will advocate for the child's wishes.¹¹

representation). MCL 712A.17c(7) now states in part: "*In addition to any other powers and duties, a lawyer-guardian ad litem's powers and duties include those prescribed in section 17d.*" (Emphasis added.)

⁹ To constitute effective assistance of counsel, a child's attorney's conduct must comply with "applicable statutes, court rules, rules of professional conduct, and any logically relevant case law." *In re AMB*, 248 Mich App 144, 226 (2001). (Footnotes omitted.)

¹⁰ Attorneys and certified social workers may be deprived of their professional licenses or certifications for violations of law and applicable ethical rules. See *Grievance Administrator v Carson*, Case No. 02-53-6A (September 5, 2002) (revocation of license to practice law for failure to visit child, consult with social worker, visit foster parent, establish a permanency plan for the child, or make reasonable efforts to expedite the proceedings) and *Becker-Witt v Dep't of Consumer & Industry Services*, 256 Mich App 358 (2003) (revocation of social worker's certification for failure to report suspected sexual abuse of the client's child).

¹¹ See MCL 712A.17d(2).

A L-GAL must provide the child with competent representation.¹² Before accepting appointment, a L-GAL should have an understanding of the procedural and substantive law governing child protective proceedings, child development (including the effect of abuse or neglect on development),¹³ and the agencies that provide services to children and families. In any given case, a L-GAL may need to gain knowledge, through consultation with others or study, in a specialized area, including medical aspects of child abuse and neglect, child sexual abuse, substance abuse, mental illness, domestic violence, foster care regulations, funding issues, governmental benefit programs, applicable federal law (including the Indian Child Welfare Act), evaluation of psychological reports, education law, and social and cultural issues related to child-rearing practices.¹⁴ When necessary, the L-GAL should request appointment, at public expense, of an expert witness. To help ensure that a L-GAL provides children with competent representation, the L-GAL and court should keep caseloads at a reasonable level.

A L-GAL must be diligent and prompt, and expedite the case consistent with the child's needs and interests.¹⁵ The L-GAL must be familiar with the time requirements in the law governing child protective proceedings.¹⁶ Adjournments should be granted only for good cause, after taking the

¹² See MRPC 1.1 and Comment.

¹³ See Appendix F for an article that provides a brief overview of child development concepts.

¹⁴ A good overview of many of these issues is contained in Baker, et al., *What I Wish I'd Learned in Law School: Social Science Research for Children's Lawyers*, ABA Center on Children and the Law, 1997. See also Appendix A, which contains a list of resources intended to guide a L-GAL's initial investigation of these and other specialized areas.

¹⁵ MRPC 1.3 and 3.2.

¹⁶ See Miller, *Child Protective Proceedings Benchbook: A Guide to Abuse & Neglect Cases—Third Edition* (MJI, 2006), Section 5.13, for a table containing time and notice requirements.

child's best interests into consideration, and for as short a period as necessary.¹⁷

When a child is removed from his or her home, a L-GAL must seek to reduce the trauma resulting from separation of child and parent. This may be done by objecting to removal in an appropriate case, advocating for placement with a relative, seeking an early return of the child home, and helping to maintain, to the extent possible, a child's normal school and other activities.

Confidentiality and the attorney-client privilege. MCL 712A.17d(1)(a) states that a L-GAL's duties include "[t]he obligations of the attorney-client privilege." The obligations of the attorney-client privilege include those imposed by the rules of professional conduct governing confidentiality and by the common-law attorney-client privilege. The relevant rule of professional conduct, MRPC 1.6, states as follows:

“(a) ‘Confidence’ refers to information protected by the client-lawyer privilege under applicable law, and ‘secret’ refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client.

“(b) Except when permitted under paragraph (c), a lawyer shall not knowingly:

- (1) reveal a confidence or secret of a client;
- (2) use a confidence or secret of a client to the disadvantage of a client; or
- (3) use a confidence or secret of a client for the advantage of the lawyer or of a third person, unless the client consents after full disclosure.

“(c) A lawyer may reveal:

- (1) confidences or secrets with the consent of the client or clients affected, but only after full disclosure to them;

¹⁷ MCR 3.923(G).

- (2) confidences or secrets when permitted or required by these rules, or when required by law or by court order;
- (3) confidences and secrets to the extent reasonably necessary to rectify the consequences of a client's illegal or fraudulent act in the furtherance of which the lawyer's services have been used;
- (4) the intention of a client to commit a crime and the information necessary to prevent the crime; and
- (5) confidences or secrets necessary to establish or collect a fee, or to defend the lawyer or the lawyer's employees or associates against an accusation of wrongful conduct.

“(d) A lawyer shall exercise reasonable care to prevent employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by paragraph (c) through an employee.”

The common-law attorney-client privilege limits the admissibility of the client's confidential communications to his or her attorney for the purpose of obtaining legal advice.¹⁸ “The purpose of the attorney-client privilege is to permit a client to confide in the client's counselor, knowing that the communications are safe from disclosure.”¹⁹ The privilege belongs to the client; only the client may waive the privilege.²⁰ Although it may help the child to feel comfortable to have a person whom the child knows present at the first meeting between a child and a L-GAL, the child's meaningful

¹⁸ *Alderman v People*, 4 Mich 414, 422 (1857).

¹⁹ *Co-Jo, Inc v Strand*, 226 Mich App 108, 112 (1997).

²⁰ *Leibel v General Motors Corp*, 250 Mich App 229, 240 (2002).

exercise of the attorney-client privilege requires the L-GAL to meet with the child without other parties present. The presence of a third party during communications between attorney and client destroys the privilege, unless the third party is an agent of the attorney or client.²¹

A conflict between a L-GAL's duty to preserve the child's confidences and secrets and a L-GAL's duty to advocate for the child's best interests may arise in certain circumstances, such as when the child discloses to the L-GAL that he or she has been subject to additional abuse or neglect, or that he or she is preparing to run away from placement. A L-GAL is not a "mandatory reporter" under MCL 722.623(1) of the Child Protection Law, and running away from a placement is not a criminal offense.²² An attorney must not disclose a client's confidential communications without the client's consent unless disclosure is required by law or court order.²³ In these circumstances, the L-GAL should counsel the child and encourage him or her to allow the L-GAL to disclose the confidential information to the court.²⁴ The L-GAL may also request the appointment of a guardian ad litem or CASA if available in the jurisdiction. Such circumstances exemplify the unique role and responsibilities of the L-GAL. Preservation of attorney-client

²¹ *Grubbs v Kmart Corp*, 161 Mich App 584, 589 (1987).

²² It may be a status offense. See MCL 712A.2(a)(2). If the child discloses that he or she intends to commit a criminal offense in conjunction with running away from placement, the L-GAL may be permitted to disclose such information to the court pursuant to MRPC 1.6(c)(4). Courts and supervising agencies are required to institute expedited procedures in cases involving children absent without leave from a court-ordered placement. See Admin Order No. 2002-4, 467 Mich cv (2002), and DHS *Services Manual*, CFF 722-3.

²³ MRPC 1.6(b)(1) and (c)(1) and (2).

²⁴ A L-GAL may also seek guidance from the State Bar of Michigan. The State Bar of Michigan Attorney Ethics Helpline number is (877) 558-4760. Neither the Michigan Legislature nor Michigan appellate courts have addressed a L-GAL's liability in a subsequent negligence action for injuries to the child. See MCL 691.1407(6) ("A guardian ad litem is immune from civil liability for an injury to a person . . . if he or she is acting within the scope of his or her authority as a guardian ad litem").

confidentiality is an important interest; however, a L-GAL may need to strike a balance between traditional attorney roles and responsibilities and the legislatively mandated responsibility to represent a child's best interests. The Advisory Committee for this protocol recognizes that L-GALs must counsel and advise their clients based on the circumstances of individual cases. In doing so, the Advisory Committee fervently hopes that L-GALs will be guided by a recognition of the unique vulnerabilities of abused and neglected children, and a recognition that a fundamental goal of child protective proceedings is that children emerge from the process in safe and permanent home settings.

Pursuant to MCL 712A.17d(1)(i), a L-GAL must inform the court of the child's wishes and preferences, but such communication must be "[c]onsistent with the law governing attorney-client privilege." "A lawyer[-guardian ad litem] who is asked to produce information that is covered by the attorney-client privilege or that contains confidences and secrets within MRPC 1.6, and with regard to which the client does not consent to disclosure, must await a subpoena, exercise the attorney-client privilege, and await the presiding judge's instruction of whether to release the information."²⁵

Neither the court nor another party may call a L-GAL as a witness to testify regarding matters related to the case, and a L-GAL's case file is not discoverable.²⁶

Participation in the proceedings. A L-GAL is "entitled to full and active participation in all aspects of the litigation and access to all relevant information regarding the child."²⁷ A L-GAL

²⁵ RI-318 (March 22, 2000).

²⁶ MCL 712A.17d(3).

²⁷ MCL 712A.17d(1)(b).

must attend all hearings, including the preliminary hearing.²⁸ If the DHS is considering filing a petition requesting termination of parental rights at the initial disposition hearing, the L-GAL should attend the conference required by MCL 722.638(3) to determine an appropriate course of action. A L-GAL should attend local Foster Care Review Board meetings involving a review of the child's or a sibling's case. The L-GAL should attend mediation sessions if held.

Substitution may occur only for sufficient cause and only with court approval.²⁹ Courts and L-GALs should discourage the routine use of substitution by “emergency house counsel” or any other attorney for the L-GAL appointed to represent the child. Frequent substitution of L-GALs undermines the purpose of MCL 712A.17d. Nonetheless, MCR 3.915(D)(2) allows for temporary substitution in certain circumstances. That rule states in part:

“The court may permit another attorney to temporarily substitute for the child’s lawyer-guardian ad litem at a hearing, if that would prevent the hearing from being adjourned, or for other good cause. Such a substitute attorney must be familiar with the case and, for hearings other than a preliminary hearing or emergency removal hearing, must review the agency case file and consult with the foster parents and caseworker before the hearing unless the child’s lawyer-guardian ad litem has done so and communicated that information to the substitute attorney. The court shall inquire on the record whether the attorneys have complied with the requirements of this subrule.”

A L-GAL should ask the court for permission to withdraw from the representation only if a

²⁸ See MCR 3.915(B)(2)(a) (court must appoint L-GAL for child at every hearing, including preliminary hearing) and MCR 3.965(B)(2) (L-GAL must attend preliminary hearing).

²⁹ MCL 712A.17d(1)(h).

conflict of interest arises³⁰ or if the L-GAL is unable to communicate with the child for reasons other than age.

A L-GAL should seek the truth, not defend a preordained position; file necessary pleadings and other papers, including appropriate motions; and file a witness list and call witnesses independently from the petitioner. A L-GAL's position may shift during the course of the proceedings. A L-GAL's position regarding the child's best interests may mirror, wholly or in part, a parent's or the agency's position, but the L-GAL must still independently develop a theory of the case and fully participate in the proceedings rather than merely endorsing another party's position. A L-GAL should insist on his or her status as an independent representative of a party. For example, the L-GAL should insist that he or she not be required to sit with either the prosecuting attorney or a parent during a hearing.

A L-GAL should present to the court relevant and admissible evidence and information. A L-GAL may file a motion or petition for review of the child's placement when the L-GAL finds that placement to be inappropriate or unsafe.³¹ If necessary, a L-GAL may also file a report of suspected child abuse or neglect with DHS. At trial, at the conclusion of the proofs, the L-GAL may make a recommendation to the fact finder as to whether one or more of the statutory grounds in the petition have been proven by a preponderance of the evidence.³² Before entering dispositional orders, the court must consider any written or oral information concerning the child provided by the

³⁰ See MRPC 1.7.

³¹ See MCR 3.966(A)-(B). A L-GAL may also file a complaint with the Children's Ombudsman pursuant to MCL 722.925. Go to www.michigan.gov/oco for further information. The L-GAL may also file a complaint with the DHS against a licensed foster care home, agency, or institution. For the complaint form, go to http://www.michigan.gov/documents/comp_frm_50821_7.pdf.

³² MCR 3.972(D).

L-GAL.³³ A L-GAL may file a petition on behalf of the child seeking court jurisdiction or termination of parental rights.³⁴

A L-GAL may seek review of a decision or order by filing a request for review of a referee's recommended findings and conclusions, a petition for rehearing, or an appeal.³⁵

Child's attendance at a hearing and child's testimony regarding abuse. A child has a right to attend a hearing.³⁶ A child who attends a hearing may understand that the issues surrounding his or her custody are being taken seriously. However, the court may determine, based on the child's age and maturity and the nature of the testimony at the hearing, that the child's interests require that he or she be excused from attending part or all of a trial or a disposition hearing.³⁷ The L-GAL may counsel the child regarding attending a hearing, including informing the child that his or her attendance at a hearing will not invariably result in returning home.

A L-GAL must decide whether a child should testify at a hearing regarding alleged abuse. When deciding whether the child should testify, the L-GAL may consider the child's need or desire to testify, the necessity of the child's testimony, the use of a hearsay exception to obviate the need for the child's direct testimony, and the child's ability to provide testimony and to withstand cross-examination. The L-GAL should be familiar with the law governing competence of witnesses. If the

³³ MCL 712A.18f(4) and MCL 712A.19(11).

³⁴ MCL 712A.11(1), MCL 712A.19b(6), and MCR 3.977(A)(2)(b)-(d). The L-GAL may seek input from the prosecuting attorney before filing a petition but is not bound by a prosecuting attorney's decision not to file a petition.

³⁵ See MCR 3.991, 3.992, and 3.993.

³⁶ MCL 712A.12 ("... the court in its discretion may excuse but not restrict children from attending the hearing").

³⁷ MCR 3.972(B)(1) and MCR 3.973(D)(1).

child is to testify, the L-GAL should prepare the child prior to his or her appearance in the courtroom by showing the child the courtroom, allowing the child to sit in the witness stand, providing a booster seat if necessary, telling the child where others will sit, and the like. If the L-GAL determines that it is not in the child's best interests to testify, the L-GAL should seek a stipulation from the other parties not to call the child as a witness. If the child will be called as a witness by another party, the L-GAL should explore the use of alternative procedures to obtain the child's testimony in the least detrimental manner.³⁸ The L-GAL may file a motion to ensure developmentally appropriate questions and should make every effort to prevent cross-examination by leading questions. In all cases, the L-GAL should seek direction from the court.

Case plan development and services to family. The L-GAL should be notified of the date and time of a case plan development conference to allow him or her to participate in constructing a case plan and parent-agency agreement. However, the L-GAL should not be present at the conference with a respondent unless that respondent's attorney is also present or has been made aware that the L-GAL will attend the conference. As required by the Michigan Rules of Professional Conduct, the L-GAL must first contact a respondent's attorney and ask permission to speak with that respondent.³⁹ A L-GAL should obtain the attorney's permission in writing or confirm it in writing once permission has been granted. Parents should be informed that they are not obligated to discuss the case with the L-GAL, and that the L-GAL may be required to use the information gained against the parent in representing the child.

A L-GAL must inform the court "if . . . services are not being provided in a timely manner,

³⁸ See MCL 712A.17(7) and MCL 712A.17b. A pretrial motion must be filed before using such alternative procedures. See MCR 3.922(E). A L-GAL may also request that an impartial person address questions to a child-witness at a hearing.

³⁹ MRPC 4.2.

if the family fails to take advantage of the services, or if the services are not accomplishing their intended purpose.”⁴⁰ The L-GAL may do so immediately, by motion, or at a scheduled review hearing. The L-GAL may also attempt to remedy the problem by contacting the caseworker, service provider, and parent’s attorney.

Cooperative resolution. MCL 712A.17d(1)(k) requires a L-GAL to identify common interests among the parties and, consistent with the rules of professional conduct and to the extent possible, to promote a cooperative resolution of a case “through consultation with the child’s parent, foster care provider, guardian, and caseworker.” Cooperative resolution prior to trial may allow faster implementation of a case plan and parent-agency agreement. Because the L-GAL represents and advocates for the child’s best interests, he or she may be particularly helpful in negotiating a cooperative resolution regarding the permanency plan for the child. The L-GAL may suggest that the case be referred to permanency planning mediation if available.⁴¹

On the other hand, a L-GAL should not hesitate to advocate a position contrary to another party’s position. The L-GAL should participate in plea negotiations between the prosecuting attorney or other attorney for the petitioner and the respondent’s attorney. The court has discretion to allow a respondent to plead to an amended petition “provided that the petitioner and the attorney for the child have been notified . . . and have been given the opportunity to object before the plea is accepted.”⁴² The court may allow amendment of a petition as the interests of justice require,⁴³ and the L-GAL should ensure that such amendments are consistent with the child’s best interests.

⁴⁰ MCL 712A.17d(1)(j).

⁴¹ Go to <http://courts.michigan.gov/scao/dispute/odr.htm> for further information.

⁴² MCR 3.971(A).

⁴³ MCL 712A.11(6).

As required by the Michigan Rules of Professional Conduct, the L-GAL must first contact a party's attorney and ask permission to speak with that party.⁴⁴ A L-GAL should obtain the attorney's permission in writing or confirm it in writing once permission has been granted. Parents should be informed that they are not obligated to discuss the case with the L-GAL, and that the L-GAL may be required to use the information gained against the parent in representing the child. However, the L-GAL may contact the caseworker without obtaining the consent of the prosecuting attorney, assistant attorney general, or other attorney representing the agency.⁴⁵ If the prosecuting attorney or assistant attorney general denies access to the caseworker, the L-GAL should seek a court order.

Requesting court authorization to pursue other issues on the child's behalf. MCL 712A.17d(1)(l) requires a L-GAL "[t]o request authorization by the court to pursue issues on the child's behalf that do not arise specifically from the court appointment." The L-GAL should pursue issues related to the child protective proceeding, such as custody, guardianship, paternity, termination of parental rights, adoption, and appeals. In addition, the L-GAL may request court authorization and payment by the court to pursue issues on behalf of the child that do not arise specifically from the court appointment. Those issues include:⁴⁶

- ▶ child support;
- ▶ delinquency or status offender matters;⁴⁷

⁴⁴ MRPC 4.2.

⁴⁵ RI 316 (December 13, 1999), citing the commentary to MRPC 4.2, which allows communications authorized by law, including "the right of a party to a controversy with a government agency to speak with government officials about the matter."

⁴⁶ This list of issues is based in part on American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (1996), D-12.

⁴⁷ A L-GAL representing a child in delinquency or status offender matters may cause practical problems. For example, the L-GAL may be required to confer with parents regarding the

- ▶ social security and other public benefits;
- ▶ personal injury;⁴⁸
- ▶ school/education issues, especially for a child with disabilities;
- ▶ mental health proceedings;
- ▶ name change;
- ▶ medication issues;
- ▶ abortion;
- ▶ estate planning;
- ▶ tribal membership; and
- ▶ employment.

Depending upon the particular need and the resources available in the community, a L-GAL may seek assistance to pursue such issues on the child's behalf. For example, a L-GAL may seek support and assistance from a CASA, a member of the private bar who offers appropriate services pro bono, a Legal Aid office, or a local tribal services office.

Length of L-GAL appointment and L-GAL duties. A L-GAL must serve until discharged by the court, and the court shall not discharge the L-GAL "as long as the child is subject to the jurisdiction, control, or supervision of the court, or of the Michigan children's institute or

delinquency or status offender matters, but the parents may be represented by counsel in the child protective proceeding. Attorneys are forbidden from talking directly to a represented party. MRPC 4.2. It should also be emphasized that a L-GAL and an attorney functioning as defense counsel for a juvenile in delinquency proceedings have very different goals and may be advocating contradictory positions in the two proceedings.

⁴⁸ See CI-1016 (July 9, 1984) (it is not unethical for a court-appointed guardian ad litem to represent a child in a separate action alleging a violation of the mandatory reporting requirements of the Child Protection Law).

other agency, unless the court discharges the [L-GAL] for good cause shown on the record.”⁴⁹ In most cases, this will entail representing the child in appeal proceedings.⁵⁰ Following termination of parental rights, a L-GAL must ensure that reasonable efforts are made to finalize a child’s adoption or other permanent placement.⁵¹ If the child has been committed to the Michigan Children’s Institute (MCI), the L-GAL may consult with the MCI superintendent regarding that commitment, the child’s placement, and permanency planning for the child. If the L-GAL has an objection regarding these issues, the L-GAL and MCI superintendent must consult with one another.⁵²

Building relationships with others. Building good working relationships with child protective services workers, foster care workers, foster parents, and mental health or other professionals involved with the child may help the L-GAL to efficiently and competently perform his or her duties. For example, a L-GAL may wish to meet regularly with the foster care workers who are assigned to the same children as the L-GAL. This would allow the L-GAL and foster care workers to get to know one another and to exchange information and insights regarding the children. A L-GAL may also wish to organize and speak to a group meeting of foster parents so that the L-GAL becomes familiar to them. Foster parents are often invaluable sources of information regarding the children in their care, and establishing relationships with them will allow L-GALs access to such information.

⁴⁹ MCL 712A.17c(9).

⁵⁰ Check local court practice.

⁵¹ See MCL 712A.19c and MCR 3.978, which contain the procedures for post-termination review hearings.

⁵² MCL 400.204(2).

5. Explaining the Role of the L-GAL to the Child

Establishing rapport with and explaining your role to the child. A L-GAL is required to explain his or her role to the child, “taking into account the child’s ability to understand the proceedings.”⁵³ The L-GAL should meet with and explain the L-GAL’s role to the child as soon as possible after appointment. A L-GAL must establish rapport with the child. The initial meeting should occur in surroundings that are comfortable for the child, preferably in his or her home. A person whom the child knows may be present to make the child more comfortable and allow the L-GAL and child to become familiar with one another. A caseworker may facilitate meaningful communication between the L-GAL and child. However, others should only be present when non-confidential information is discussed.⁵⁴ The L-GAL should also ask the child if there is anything he or she wants from home, such as a favorite toy or book.

The L-GAL should use developmentally appropriate language and concrete examples illustrating the L-GAL’s role in the proceedings. The L-GAL should consider the child’s age, education level, cultural context, and degree of language acquisition when providing this explanation. After explaining the L-GAL’s role, the L-GAL may ask the child to state his or her understanding of what the L-GAL has said to ensure that the child understands. The L-GAL should also allow the child ample time to ask questions. The L-GAL should also explain his or her role to the child’s foster parent or guardian.

⁵³ MCL 712A.17d(1)(f). The Forensic Interviewing Protocol, attached as Appendix C, contains several general recommendations regarding talking with children. See also Walker, *Handbook on Questioning Children: A Linguistic Perspective*, 2d ed, ABA Center on Children and the Law, 1999.

⁵⁴ The presence of a third party during communications between attorney and client destroys the privilege, unless the third party is an agent of the attorney or client. *Grubbs v Kmart Corp*, 161 Mich App 584, 589 (1987).

The L-GAL's explanation should include the following:

- ▶ that the L-GAL's purpose is to decide and advocate for the child's best interests, and that the L-GAL will take into account the child's wishes but is not bound to follow them;
- ▶ the procedure for addressing conflicts between the child's wishes and the L-GAL's assessment of the child's best interests;
- ▶ that the child's statements will be kept confidential unless the child consents to allow the L-GAL to tell others or an exception to confidentiality applies;
- ▶ the issues to be considered by the court, and the possible outcomes of the court proceedings; and
- ▶ the substance and effect of dispositional orders and other orders entered in the case, and whether the orders may be challenged or modified in the future.

6. Conducting an Independent Investigation of the Case

Importance of independent investigation. A L-GAL must “determine the facts of the case by conducting an independent investigation including, but not limited to, interviewing the child, social workers, family members, and others as necessary, and reviewing relevant reports and other information.”⁵⁵ An independent investigation is necessary to competently represent a child and formulate a conclusion as to the child's best interests. Although the DHS is charged with conducting an investigation of the case, the L-GAL must conduct his or her own independent investigation, interviewing persons and reviewing the petition and reports. Nonetheless, the L-GAL may wish to contact the caseworker at regular intervals to help the L-GAL stay informed regarding events in the case. A thorough independent investigation requires time, and the L-GAL should commence his or her investigation to allow time for its completion prior to a hearing.

⁵⁵ MCL 712A.17d(1)(c).

Interviewing the child regarding the allegations in the petition and using a forensic interviewing protocol. Multiple interviews of the child regarding the allegations in a petition must be avoided. The L-GAL should encourage the use of videotaped interviews.⁵⁶ Law enforcement personnel, DHS personnel, L-GALs, attorneys for respondents, and others must cooperate with one another to ensure that they are all present during a single interview of the child in a neutral location regarding the allegations. When a child is interviewed regarding the allegations in the petition, the interviewer must use a forensic interviewing protocol based on the model Forensic Interviewing Protocol attached as Appendix C.⁵⁷

The L-GAL should also interview persons involved with the child, including the child's friends, school personnel, caseworkers, foster parents, neighbors, relatives, coaches, clergy, mental health professionals, physicians, law enforcement officers, and potential witnesses.

Court-Appointed Special Advocates (CASAs). Where a CASA has been appointed, the L-GAL may interview the CASA. A CASA must consult with a L-GAL.⁵⁸ L-GALs should collaborate with CASAs. Because they conduct investigations and submit reports to the court, CASAs may serve as a useful source of information regarding the child, thus helping to meet the L-GAL's statutory obligation to conduct an independent investigation of the case. When appropriate, the L-GAL may call the CASA as a witness.

Reviewing reports. When appropriate, the L-GAL should review reports necessary to effectively advocate for the child, including a parent's and the child's social services, psychiatric,

⁵⁶ See MCL 712A.17b.

⁵⁷ See MCL 722.628(6). A L-GAL should determine if the county in which he or she practices has developed a forensic interviewing protocol pursuant to MCL 722.628(6).

⁵⁸ MCR 3.917(E). See also www.abanet.org/child/clp/Court Appointed Special Advocates/Top Ten Tips for Attorneys Working with CASA Volunteers.htm.

psychological, drug, medical, law enforcement, school, court, and other records. The L-GAL must resolve discrepancies or conflicts in written information and prepare to present evidence in support of the L-GAL's position. That position may be contrary to a determination contained in a report.

Obtaining access to a child's confidential records. A L-GAL is "entitled to . . . access to all relevant information regarding the child."⁵⁹ The L-GAL may obtain access to the child's confidential records via access to a caseworker's file or pursuant to court order. A DHS caseworker investigating suspected child abuse or neglect may obtain a child's confidential medical or counseling records.⁶⁰ Federal regulations permit disclosure of health care provider records pursuant to court order.⁶¹ A L-GAL may obtain access to a child's school records pursuant to court order.⁶² A "qualified protective order" authorizing a L-GAL to consent to the disclosure of records concerning a child is attached as Appendix E. The L-GAL must obtain such records in order to present an informed recommendation to the court regarding the child's best interests.

Obtaining access to a parent's confidential records. When fulfilling his or her duty to review all relevant reports and other information, a L-GAL's access to a parent's medical, counseling, or other records may be limited by confidentiality provisions. However, there are several exceptions to the confidentiality of such records of which a L-GAL should be aware. A DHS caseworker investigating suspected child abuse or neglect may obtain a parent's confidential mental

⁵⁹ MCL 712A.17d(1)(b).

⁶⁰ See MCL 722.627(2)(j) (L-GAL access to DHS central registry), MCL 722.626(2) (contents of a physician's written report to DHS concerning suspected abuse or neglect), MCL 333.16281 (procedure for DHS to obtain medical and counseling records), and MCL 330.1748(5) and MCL 330.1748a (procedure to obtain mental health records).

⁶¹ 45 CFR 164.512(e)(1)(i).

⁶² See 20 USC 1232g(b)(2)(B) and MCL 600.2165.

health records pertinent to the investigation.⁶³ A parent’s confidential mental health records may also be obtained by court order or subpoena.⁶⁴ Under federal law, a parent’s substance abuse treatment and counseling records may be disclosed pursuant to court order.⁶⁵ A DHS children’s protective services worker must be given access to Friend of the Court records related to investigation of suspected child abuse or neglect.⁶⁶

Obtaining authorization to release confidential information or requesting court

order. If necessary, the L-GAL should obtain authorizations for release of confidential information. If necessary, the L-GAL should use subpoenas, discovery under MCR 3.922, or the procedures set forth in MCR 3.923(A) to obtain records or other information regarding the child, a sibling, or a parent. MCR 3.923(A) allows the court to order production of other evidence “at any time the court believes that the evidence has not been fully developed”

A L-GAL may also ask the court to order an examination or evaluation of a child, parent, guardian, or legal custodian. MCR 3.923(B) allows the court to order an examination or evaluation of a minor, parent, guardian, or legal custodian, and MCR 3.973(E)(1) and MCR 3.975(E) provide that privilege may not be used to prevent the receipt and use of materials prepared pursuant to a court-ordered examination, interview, or course of treatment at a disposition or review hearing.

Abrogation of testimonial privileges. “Any legally recognized privileged communication except that between attorney and client . . . is abrogated and shall not constitute grounds for . . .

⁶³ MCL 330.1748a.

⁶⁴ MCL 330.1748(5)(a) and MCL 722.631.

⁶⁵ 42 USC 290dd—2(2)(c) and 42 CFR 2.63(a)(1). See also *In re Baby X*, 97 Mich App 111, 120-21 (1980) (where drug treatment records are necessary and material to the state’s proof of child neglect, a court may authorize disclosure of confidential information in such records).

⁶⁶ MCR 3.218(D).

excluding evidence in a civil child protective proceeding resulting from a report made pursuant to [the Child Protection Law].”⁶⁷ The abrogation of privileges under MCL 722.631 does not depend upon whether the person who reported the suspected abuse or neglect was a “mandatory reporter,” or whether the proffered testimony concerned the abuse or neglect that gave rise to the child protective proceeding in which the testimony is introduced.⁶⁸

7. L-GAL Duties Prior to Hearings

Reviewing the agency case file. MCL 712A.17d(1)(c) states in part as follows:

“The agency case file shall be reviewed before disposition and before the hearing for termination of parental rights. Updated materials shall be reviewed as provided to the court and parties. The supervising agency shall provide documentation of progress relating to all aspects of the last court ordered treatment plan, including copies of evaluations and therapy reports and verification of parenting time not later than 5 business days before the scheduled hearing.”

“Agency case file” is defined in MCL 712A.13a(1)(b) as “the current file from the agency providing direct services to the child, that can include the child protective services file if the child has not been removed from the home or the family independence agency or contract agency foster

⁶⁷ MCL 722.631. See also MCL 333.16281(2), which provides that the physician-patient, dentist-patient, counselor-patient, and psychologist-patient privileges do not apply to records or information released to DHS during an investigation of suspected child abuse or neglect.

⁶⁸ *In re Brock*, 442 Mich 101, 115-20 (1993). In *Brock*, the parents’ neighbor, who baby-sat for the children, reported suspected abuse. At trial, testimony of a psychologist and a physician was admitted to show the respondent-mother’s history of emotional difficulties. The Michigan Supreme Court held that abrogation of privileges under MCL 722.631 does not depend upon whether reporting was required or not, or whether the proffered testimony concerned the abuse or neglect that gave rise to the protective proceeding. *Brock*, *supra* at 117. Instead, the testimony must result from a report of abuse or neglect and be relevant to the proceeding. *Id.* at 119–20. The Court stated that “[i]t is in the best interests of all parties for the factfinder to be in possession of all relevant information regarding the welfare of the child.” *Id.* at 119.

care file as defined under 1973 PA 116, MCL 722.111 to 722.128.”

Meeting with or observing the child. MCL 712A.17d(1)(d) requires a L-GAL “[t]o meet with or observe the child and assess the child’s needs and wishes with regard to the representation and the issues in the case in the following instances:

“(i) Before the pretrial hearing.

“(ii) Before the initial disposition, if held more than 91 days after the petition has been authorized.

“(iii) Before a dispositional review hearing.

“(iv) Before a permanency planning hearing.

“(v) Before a post-termination review hearing.

“(vi) At least once during the pendency of a supplemental petition.

“(vii) At other times as ordered by the court. Adjourned or continued hearings do not require additional visits unless directed by the court.”⁶⁹

These requirements may present financial or practical problems for the L-GAL. For example, the child may be placed in another county or state and the court that appointed the L-GAL will not reimburse L-GALs for their actual expenses in meeting with or observing a child who has been placed outside of the county. Nonetheless, meeting with or observing the child is a very important element in providing the child with competent representation and in protecting the child from further abuse or neglect.

⁶⁹Effective February 25, 2004, MCR 3.915(B)(2)(a) was amended to require a court, “at each hearing,” to “inquire whether the [L-GAL] has met with the child, as required by MCL 712A.17d(1)(d)” The amended court rule also requires the court to make the L-GAL state, on the record, his or her reasons for failing to meet with the child as required by MCL 712A.17d(1)(d). Section 17d(1)(d) was amended, effective December 28, 2004, to require a L-GAL to “meet with or observe the child” in the specific circumstances listed above. An amendment to MCR 3.915(B)(2)(a) proposed on April 13, 2006, would conform the court rule to the amended statute.

“The court may allow alternative means of contact with the child if good cause is shown on the record.”⁷⁰ The following are practice suggestions aimed at both meeting the L-GAL’s duties to the child and ameliorating possible financial or practical problems of compliance with MCL 712A.17d(1)(d).

- ▶ Meetings with or observations of the child should occur in the child’s living environment or in a place where the child is comfortable.
- ▶ A L-GAL may meet with or observe the child in his or her home environment early in the case and outside that environment later in the case. If the child remains in his or her home or has been returned home, interviewing the child in that environment may inhibit the child from disclosing information to the L-GAL.⁷¹
- ▶ Although meetings with or observations of a child should not occur in the hallway outside of the courtroom just prior to a hearing, the court may require the person with custody of the child, an agency caseworker, or a DHS caseworker to make the child available to the L-GAL at the courthouse several hours before a hearing.
- ▶ A L-GAL may ask the child’s foster parent or foster care worker to take the child to a comfortable meeting place “half-way” between the child’s foster home and the court.
- ▶ If a child has been placed in another county, the court may appoint co-counsel located in the other county to meet with or observe the child in the child’s living environment. Co-counsel would then file a report with the L-GAL.

⁷⁰MCL 712A.17d(1)(e).

⁷¹ See also MCL 722.628c, which prohibits interviewing a child in the presence of the person suspected of abusing or neglecting the child.

- ▶ A L-GAL may visit with or observe the child during parenting time sessions, especially where the child's siblings will also be present.
- ▶ A L-GAL may meet with the child at his or her school, after school hours but before the child goes home.
- ▶ A L-GAL may meet with the child at the agency to avoid distractions and to assure that the meeting will occur in private.
- ▶ A L-GAL may meet with the child at a psychologist's or counselor's office after the child's appointment with the psychologist or counselor.
- ▶ The L-GAL must meet with or observe a very young or non-communicative child as required by MCL 712A.17d(1)(d). In addition to allowing a L-GAL to become familiar to and gather positive information about the child, an in-person visit may protect the child from being abused or neglected while in foster care. In conjunction with an in-person visit, the L-GAL should consult with the child's foster parents to gain information about the child.

Adjourned or continued hearings. “Adjourned or continued hearings do not require additional visits unless directed by the court.”⁷²

Maintaining communication with the child. The L-GAL must maintain communication with the child.⁷³ Although the caseworker is not required to arrange meetings between the child and L-GAL, a caseworker may be very helpful in arranging such meetings and in other ways. Courts, DHS, and child-placing agencies must assure that a L-GAL is kept informed regarding any change in the child's placement or address.

⁷²MCL 712A.17d(1)(d)(*vii*).

⁷³ MRPC 1.4 and Comment.

8. Determining and Advocating for the Child's Best Interests

MCL 712A.17d(1)(i) requires a L-GAL

“[t]o make a determination regarding the child's best interests and advocate for those best interests according to the lawyer-guardian ad litem's understanding of those best interests, regardless of whether the lawyer-guardian ad litem's determination reflects the child's wishes. The child's wishes are relevant to the lawyer-guardian ad litem's determination of the child's best interests, and the lawyer-guardian ad litem shall weigh the child's wishes according to the child's competence and maturity. Consistent with the law governing attorney-client privilege, the lawyer-guardian ad litem shall inform the court as to the child's wishes and preferences.”⁷⁴

Importance of investigation. Prior to making a determination regarding the child's best interests, the L-GAL must gather detailed information regarding the child's needs, development, and behavior, and whether the child is benefitting from or being harmed by his or her current living arrangement.

Defining a child's best interests. The Juvenile Code does not contain a definition of the “best interests of the child.” Although not directly applicable to child protective proceedings, the Child Custody Act and Adoption Code contain lists of factors that courts use to determine a child's best interests in custody and adoption proceedings, and a L-GAL may refer to those factors to guide his or her determination of a child's best interests in child protective proceedings. The factors contained in the Adoption Code are as follows:

“(f) ‘Best interests of the adoptee’ or ‘best interests of the child’ means the sum total of the following factors to be considered, evaluated, and determined by the court to be applied to

⁷⁴ See pages 11-14 for discussion of the attorney-client privilege.

give the adoptee permanence at the earliest possible date:

- (i) The love, affection, and other emotional ties existing between the adopting individual or individuals and the adoptee or . . . the putative father and the adoptee.
- (ii) The capacity and disposition of the adopting individual or individuals or . . . the putative father to give the adoptee love, affection, and guidance, and to educate and create a milieu that fosters the religion, racial identity, and culture of the adoptee.
- (iii) The capacity and disposition of the adopting individual or individuals or . . . the putative father[] to provide the adoptee with food, clothing, education, permanence, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
- (iv) The length of time the adoptee has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
- (v) The permanence as a family unit of the proposed adoptive home[] or . . . the home of the putative father.
- (vi) The moral fitness of the adopting individual or individuals or . . . of the putative father.
- (vii) The mental and physical health of the adopting individual or individuals or . . . of the putative father, and of the adoptee.
- (viii) The home, school, and community record of the adoptee.
- (ix) The reasonable preference of the adoptee, if the adoptee is 14 years of age or less and if the court considers the adoptee to be of sufficient age to express a preference.
- (x) The ability and willingness of the adopting individual or individuals to adopt the

adoptee's siblings.

(xv) Any other factor considered by the court to be relevant to a particular adoption proceeding, or to a putative father's request for child custody.”⁷⁵

A L-GAL must identify a child's best interests given the available dispositional options in the case. This may involve identifying the dispositional option that is least detrimental to the child. The L-GAL should focus on the child's particular needs and interests, not on the needs and interests of all children of similar age or developmental level. A L-GAL should consider the child's needs for food, clothing, and shelter; nurturance, stability, and continuity; physical safety; and maintenance, to the extent possible, of relationships with siblings, extended family members, and non-biological caretakers.

Using objective criteria to determine the child's needs and interests. When determining the child's best interests, the L-GAL should avoid imposing his or her values when evaluating the child's needs and interests. A L-GAL must be familiar with the cultural norms and values regarding a child's family. The L-GAL may rely on reports by and consult with experts in determining the child's needs and interests, and in weighing those needs and interests against one another.

Determining the child's competence and maturity. When determining a child's competence and maturity and deciding how much weight should be assigned to the child's wishes and preferences, the L-GAL may consider the following:

⁷⁵ MCL 710.22(g). The factors applicable to child custody cases may be found at MCL 722.23. In child protective proceedings, it is inappropriate to compare a child's parent's home or abilities to a relative's or foster parent's home or abilities. Although a court is not required to make findings regarding the “best interests” factors when deciding whether to terminate parental rights, several of the factors in the Adoption Code and Child Custody Act may be relevant in a given child protective case. *In re JS & SM*, 231 Mich App 92, 99-103 (1998), overruled on other grounds 462 Mich 341 (2000).

- ▶ the child's age (younger children often express the desire to return home regardless of the home's condition);
- ▶ the child's developmental stage (cognitive ability, socialization, and emotional development);
- ▶ the child's ability to articulate a relevant position and reasons supporting that position;
- ▶ the child's decision-making process, including the presence of influence, coercion, or exploitation, the child's conformity to others' positions, and the variability or consistency of the child's position; and
- ▶ the child's ability to understand the consequences of the decision, including the risk of harm to the child and the finality of the decision.⁷⁶

The L-GAL may obtain information regarding several of these factors from a psychological evaluation of the child if one has been conducted.

A child may be competent to make some decisions regarding the representation but not others. Moreover, a child's competence may change over the course of a case. A L-GAL's position may come to mirror the child's position, and the L-GAL's role then becomes similar to the traditional attorney's role.

Resolving conflicts between a child's interests and a L-GAL's determination of a child's best interests. A L-GAL must inform the court of a child's wishes and preferences.⁷⁷ MCL 712A.17d(2) gives the court discretion to appoint an attorney for the child where the L-GAL's best interests determination is inconsistent with the child's identification of his or her interests. That provision states:

⁷⁶ This list is taken in part from *Proceedings of the Conference on Ethical Issues in the Legal Representation of Children*, 64 Fordham L R 1281, 1313 (1996), Recommendations of the Conference, V.A.8.

⁷⁷ A L-GAL's statements to the court must be "[c]onsistent with the law governing attorney-client privilege" MCL 712A.17d(1)(i). See pages 11-14 for further discussion.

“If, after discussion between the child and his or her lawyer-guardian ad litem, the lawyer-guardian ad litem determines that the child’s interests as identified by the child are inconsistent with the lawyer-guardian ad litem’s determination of the child’s best interests, the lawyer-guardian ad litem shall communicate the child’s position to the court. If the court considers the appointment appropriate considering the child’s age and maturity and the nature of the inconsistency between the child’s and the lawyer-guardian ad litem’s identification of the child’s interests, the court may appoint an attorney for the child. An attorney appointed under this subsection serves in addition to the child’s lawyer-guardian ad litem.”⁷⁸

The L-GAL may inform the court of the child’s position verbally or in writing. An in-camera proceeding may be appropriate to protect confidential information.⁷⁹

If appointed, the “attorney” serves “as the child’s legal advocate in a traditional attorney-client relationship with the child, as governed by the Michigan rules of professional conduct. An attorney . . . owes the same duties of undivided loyalty, confidentiality, and zealous representation of the child’s expressed wishes as the attorney would to an adult client.”⁸⁰

⁷⁸The following cases have construed §17d(2): *In re Arnold*, unpublished opinion per curiam of the Court of Appeals, decided September 27, 2005 (Docket No. 262781), *In re CH*, unpublished memorandum opinion of the Court of Appeals, decided April 24, 2003 (Docket No. 243186, 243208), and *In re Purdy*, unpublished opinion per curiam of the Court of Appeals, decided March 30, 2001 (Docket No. 225936).

⁷⁹ See *Powell Products, Inc v Jackhill Oil Co*, 250 Mich App 89, 101 (2002).

⁸⁰ MCL 712A.13a(1)(c).

APPENDIX A

RESOURCES

Resources

Listed below are citations to statutes, court rules, cases, and other sources relevant to the L-GAL's role in child protective proceedings. This list is only intended to introduce a L-GAL to basic sources; it is not intended to be exhaustive.

Michigan Statutes

Child Protection Law, MCL 722.621 et seq. These statutes govern reports to and investigation by Children's Protective Services, DHS, of suspected child abuse and neglect.

Juvenile Code, MCL 712A.1 et seq. This code contains the substantive and procedural law governing child protective proceedings in the Family Division of Circuit Court.

Michigan Adoption Code, MCL 710.21 et seq. This code contains the substantive and procedural law governing adoption proceedings in the Family Division of Circuit Court.

Estates & Protected Individuals Code, MCL 700.1101 et seq. Includes provisions for appointment of guardians.

Child Care Organizations, MCL 722.111 et seq. Licensing and other requirements for foster care families and institutions; includes procedure for obtaining variance to licensing rules or statutes to allow placement of siblings together, and for obtaining consent for medical treatment of a court ward.

Foster Care Review Boards, MCL 722.131 et seq. Provides for citizen review of foster care cases.

Foster Care & Adoption Services Act, MCL 722.951 et seq. Includes provisions governing DHS foster care and contract agency caseworkers.

Michigan Children's Institute, MCL 400.201 et seq. Describes the authority of this agency, which is located within DHS, and to which children may be committed for adoption planning and other services following termination of parental rights.

Family Division of Circuit Court, MCL 600.1001 et seq. Describes the jurisdiction of this division of circuit court.

Uniform Child Custody Jurisdiction & Enforcement Act, MCL 722.1101 et seq. Required procedures for cases involving more than one state.

Children's Ombudsman Act, MCL 722.921 et seq. Describes the authority and duties of the Children's Ombudsman; outlines procedure for filing complaints regarding an act by an administrative or child placing agency, including DHS.

Miscellaneous provisions regarding confidentiality and release of records:

MCL 333.2640. Medical records.

MCL 333.16281. Medical records.

MCL 333.16648. Dental records.

MCL 333.18117. Records of licensed professional counselors and limited license counselors.

MCL 333.18237. Records of psychologists.

MCL 330.1748 and 330.1748a. Mental health records.

MCL 333.6112 and 333.6113. Substance abuse counseling records.

MCL 600.2165. School records.

Michigan Court Rules

Michigan Rules of Court, Subchapter 3.900, Proceedings Involving Juveniles

Model Civil Jury Instructions

Child Protection Jury Instructions, M Civ JI 97.01 et seq.

Federal Law and Regulations

Adoption Assistance & Child Welfare Act of 1980, 42 USC 620 et seq. Requires courts to make certain findings regarding removal of a child from parental custody, including that continued custody by the parent would be “contrary to the child’s welfare” and that “reasonable efforts” have been made to prevent removal or to reunify the family. Provides for review and permanency planning hearings.

Adoption & Safe Families Act of 1997, PL 105-89. Includes provisions that clarify when the agency must make “reasonable efforts” to prevent removal of a child or to reunify a family.

Regulations implementing the Adoption & Safe Families Act of 1997, 45 CFR 1355.10 et seq. Detail required court and agency procedures.

Indian Child Welfare Act, 25 USC 1901 et seq. Sets forth the procedures required when an “Indian child” is involved in a child protective or other custody proceeding.

Individuals With Disabilities Education Act, 20 USC 1400 et seq. Requires states to make public education available to children with disabilities.

Miscellaneous provisions regarding confidentiality and release of records:

Health Insurance Portability & Accountability Act, 42 USC 1301 et seq. Medical records.

42 USC 290dd et seq. Substance abuse treatment and counseling records.

42 CFR 2.31 et seq. Substance abuse treatment and counseling records.

20 USC 1232g et seq. School records.

Key Michigan Case Law

In re Dittrick Infant, 80 Mich App 219 (1977). “Anticipatory neglect or abuse” and court jurisdiction over newborn child.

In re Baby X, 97 Mich App 111 (1980). Court jurisdiction over child born with controlled substances in his or her body; release of substance abuse counseling records.

In re Hatcher, 443 Mich 426 (1993). Subject matter jurisdiction and personal jurisdiction distinguished.

People v Gates, 434 Mich 146 (1986). Criminal and child protective proceedings based upon the same allegations.

Fritts v Krugh, 354 Mich 97 (1958). Temporary and long-term child neglect.

In re Jacobs, 433 Mich 24 (1989). Parental culpability and child neglect.

In re Miller, 182 Mich App 70 (1990). Domestic violence and “unfit home environments.”

In re KH, 469 Mich 621 (2004). Paternity.

In re CAW, 469 Mich 192 (2003). Paternity.

In re Macomber, 436 Mich 386 (1990). Court’s authority to enter orders affecting adults after taking jurisdiction over a child.

In re Hensley, 220 Mich App 331 (1996). Judges’ control over interrogation of witnesses and presentation of evidence.

In re Brock, 442 Mich 101 (1993). Abrogation of privileges; use of alternative procedures to obtain child’s testimony.

In re LaFlure, 48 Mich App 377 (1973). Admissibility of evidence of a parent’s treatment of one child in hearings regarding a subsequent child.

In re Brimer, 191 Mich App 401 (1991). Expert witnesses in sexual abuse cases.

In re Rinesmith, 144 Mich App 475 (1985). Expert witnesses.

People v Beckley, 434 Mich 691 (1990). Expert witnesses.

People v Kasben, 158 Mich App 252 (1987). Competency of child witnesses.

People v Meeboer (After Remand), 439 Mich 310 (1992). Trustworthiness of child declarant's hearsay statements to medical personnel.

In re Snyder, 223 Mich App 85 (1997). Applicability of the rules of evidence at hearings on termination of parental rights.

In re Trejo Minors, 462 Mich 341 (2000). Burden of proof in termination of parental rights hearings.

In re Gazella, 264 Mich App 668 (2005). Procedures for termination of parental rights.

In re AMB, 248 Mich App 144 (2001). Standards for removal of life support; authority of attorney appointed for child; referee authority.

Key Federal Case Law

Troxel v Granville, 530 US 57 (2000). Fundamental rights of parents to custody, care, and control of their children; constitutionality of "grandparent visitation" statutes.

Santosky v Kramer, 455 US 745 (1982). "Clear and convincing evidence" standard required to terminate parental rights.

Wisconsin v Yoder, 406 US 205 (1972). Religious freedom and state compulsory education laws.

Prince v Massachusetts, 321 US 158 (1944). Religious freedom and state laws designed to protect the health, safety, and welfare of children.

Stanley v Illinois, 405 US 645 (1972). A biological father's right to a parental fitness hearing prior to removal of a child from his custody.

Lehr v Robertson, 463 US 248 (1983). Requirement that a biological father of a child born out of wedlock establish a relationship with the child before being entitled to notice of a hearing to terminate his parental rights.

Idaho v Wright, 497 US 805 (1990). Constitutional requirements for admitting a child's hearsay statements.

Maryland v Craig, 497 US 836 (1990). Constitutional requirements for using alternative procedures to obtain a child's testimony.

Smith v Organization of Foster Families for Equality & Reform, 431 US 816 (1977). Constitutionally

required procedures for removal of children from foster homes.

DeShaney v Winnebago County, 489 US 189 (1989). Responsibility of state and local social services agencies to protect children from parental violence.

Other Print Resources

American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (1996).

Proceedings of the Conference on Ethical Issues in the Legal Representation of Children, 64 Fordham L R 1281 (1996).

Tobin L. Miller, *Child Protective Proceedings Benchbook: A Guide to Abuse & Neglect Cases*—Third Edition (MJI, 2006). Available to download at

<http://courts.michigan.gov/mji/resources/cppbook/cppbench.htm>

Guidelines for Achieving Permanency in Child Protection Proceedings—Second Edition (Children's Charter of the Courts of Michigan, 2004).

Jennifer D. Warner, *Adoption Proceedings Benchbook* (MJI, 2003). Available to download at

<http://courts.michigan.gov/mji/resources/adoption/adoption.htm>

Useful Websites

ABA Center on Children & the Law, <http://www.abanet.org/child/>

US Dept of Health & Human Services, Administration for Children & Families,

<http://www.acf.dhhs.gov/programs/cb/>

National Association of Counsel for Children, <http://naccchildlaw.org/>

Michigan Child Welfare Law Resource Center,

<http://www.law.umich.edu/CentersAndPrograms/childlaw/>

Children's Charter of the Courts of Michigan, <http://www.childcrt.org/>

DHS Policy Manuals, <http://www.mfia.state.mi.us/olmweb/ex/html/>

American Academy of Pediatrics, www.aap.org

American Professional Society on the Abuse of Children, www.apsac.org

APPENDIX B
SCAO FORM JC 82
AFFIDAVIT OF SERVICE PERFORMED BY
LAWYER-GUARDIAN AD LITEM

STATE OF MICHIGAN
JUDICIAL CIRCUIT - FAMILY DIVISION
COUNTY

**AFFIDAVIT OF
SERVICE PERFORMED BY
LAWYER-GUARDIAN AD LITEM**

**CASE NO.
PETITION NO.**

Court address

Court telephone no.

1. In the matter of
name(s), alias(es), DOB

I affirm:

2. I have met with or observed the child before every proceeding or hearing as follows: (specify when and where)

☐ I did not meet with or observe the child because:

3. I have reviewed the agency case file.

4. Consistent with the Michigan Rules of Professional Conduct, I have consulted with the child's parents and/or guardians, foster care providers, and case workers.

☐ 5. I am a substitute for the appointed lawyer-guardian ad litem, I have consulted and discussed with the appointed lawyer-guardian ad litem his/her visit with the child, review of the agency case file, and any discussions with the child's parents, guardians, foster care providers, and case workers.

I understand that I will be paid for the services performed only if I have met with or observed the child before every proceeding or hearing as required by law.

Affiant signature

Address

Affiant name (type or print)

City, state, zip

Telephone no.

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Signature: _____
Date Deputy clerk/Notary public

Notary public, State of Michigan, County of _____

NOTE: In order to receive payment, this affidavit must be prepared and attached to Form MC 221, Statement of Service and Order for Payment of Court Appointed Representative.

Do not write below this line - For court use only

APPENDIX C
FORENSIC INTERVIEWING PROTOCOL

STATE OF MICHIGAN

**GOVERNOR'S TASK FORCE ON CHILDREN'S JUSTICE
AND
DEPARTMENT OF HUMAN SERVICES**

FORENSIC INTERVIEWING PROTOCOL



This publication is also available at:
www.michigan.gov/DHS/0,1607,7-124-5452_7119_25045---,00.html

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PREFACE

In 1992, the Governor's Task Force on Children's Justice was created pursuant to federal legislation to respond to the tremendous challenges involved in the handling of child abuse—particularly child sexual abuse—cases in Michigan. In August 1993, the Task Force published DHS Publication 794, *A Model Child Abuse Protocol—Coordinated Investigative Team Approach*.

In 1996, the DHS initiated the development of a forensic interviewing protocol by establishing a steering committee within DHS and enlisting nine county DHS offices to participate as pilot counties in testing the protocol. Debra Poole, Ph.D., Central Michigan University, was contracted by DHS to develop a forensic interviewing protocol and a training package to be used to train staff from the pilot counties. Debra Poole also then provided training to those counties. Debra Poole's professionalism and dedication to this project enabled DHS to meet its goals in developing the protocol. Independent of the DHS project, the Governor's Task Force on Children's Justice also identified the objective of developing and implementing a forensic interviewing protocol. From 1996 to 1998, DHS and the Governor's Task Force on Children's Justice worked together with Debra Poole in developing and implementing a protocol that would improve the interviewing techniques of all professionals involved in the investigation of child physical abuse and child sexual abuse in Michigan.

In 1998, the Child Protection Law was amended to require each county to implement a standard child abuse and neglect investigation and interview protocol using as a model the protocols developed by the Governor's Task Force on Children's Justice as published in DHS Publication 794, *A Model Child Abuse Protocol—Coordinated Investigative Team Approach* and DHS Publication 779, *Forensic Interviewing Protocol*, or an updated version of those publications.

In September 2003, the Forensic Interviewing Protocol Revision Committee convened to review the existing Protocol. After a careful and complete examination, the Committee edited sections for clarity, improved the examples, added Quick Guides, and provided some additional reference material, including relevant statutes.

This protocol should be used in conjunction with the Governor's Task Force on Children's Justice DHS Publication 794, *A Model Child Abuse Protocol—Coordinated Investigative Team Approach*. Proper implementation of the DHS Publication 779, *Forensic Interviewing Protocol* requires professional training. Professionals who have received appropriate training in the application of the protocol should conduct the interviews of children.

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Forensic Interviewing Protocol

Introduction

The goal of a forensic interview is to obtain a statement from a child, in a developmentally-sensitive, unbiased and truthseeking manner, that will support accurate and fair decision-making in the criminal justice and child welfare systems. Although information obtained from an investigative interview might be useful for making treatment decisions, the interview is not part of a treatment process. Forensic interviews should not be conducted by professionals who have an on-going or a planned therapeutic relationship with the child.

forensic interviews are hypothesis-testing rather than hypothesis-confirming (see Quick Guide #1)

There are two overriding features of a forensic interview (Poole & Lamb, 1998). First, forensic interviews are hypothesis-testing rather than hypothesis-confirming (Ceci & Bruck, 1995). Interviewers prepare by generating a set of alternative hypotheses about the sources and meanings of the allegations. During an interview, interviewers attempt to rule out alternative explanations for the allegations. For example, when children use terms that suggest sexual touching, interviewers assess their understanding of those terms and explore whether touching might have occurred in the context of routine caretaking or medical treatment. When children report details that seem inconsistent, interviewers try to clarify whether the events could have occurred as described, perhaps by exploring whether the child is describing more than one event or using words in nonstandard ways. Before closing an interview, interviewers should be reasonably confident that alleged perpetrators are clearly identified and that the alleged actions are not subject to multiple interpretations.

forensic interviews should be child-centered rather than adult-centered (see Quick Guide #2)

Second, forensic interviews should be child-centered. Although interviewers direct the flow of conversation through a series of phases, children should determine the vocabulary and specific content of the conversation as much as possible. Forensic interviewers should avoid suggesting events that have not been mentioned by the child or projecting adult interpretations onto situations (e.g., with comments such as, "That must have been frightening").

Pre-Interview Preparation

Pre-interview preparation will vary depending upon the nature of the allegations, the available resources, and the amount of time before an interview must be conducted. It is more important to collect background material when the child is preschool age, when the allegations are based on ambiguous information (such as sexual acting out), or when factors such as medical treatment or family hostilities might complicate the investigation. Relevant information can be obtained from a variety of sources, including children's protective services files, police reports, or collateral interviews with the reporting party and/or family members.¹

The following list of topics illustrates the types of information that might be useful for interviews about child sexual abuse allegations (From Poole & Lamb, 1998, adapted with permission from the American Psychological Association):

- Child's name, age, sex, and relevant developmental or cultural considerations (e.g., developmental delay, hearing or speech impairment, bilingualism)
- Child's interests or hobbies that could be used to develop rapport
- Family composition/custody arrangements
- Family members' and relevant friends' or caretakers' names (especially how the child refers to significant others, with special attention to nicknames and duplicate names)
- Caretaking environments and schedules, with the child's names for these environments
- Relevant medical treatment or conditions (e.g., genital rashes, assistance with toileting, suppositories, or recent experiences with rectal thermometers)
- Family habits or events related to allegation issues (e.g., showering or bathing with the child, a mother who allows children in the bathroom while she changes tampons, physical play or tickling)
- The content of recent sex education or abuse prevention programs
- Family's names for body parts
- Nature of the allegation and circumstances surrounding the allegation
- Possible misunderstanding of the event
- Possible motivations for false allegations (e.g., family or neighborhood hostilities that predate suspicions of inappropriate behavior)

interviewers tailor their interview preparations to the needs of each case, collecting information that will help build rapport with the child and help test alternative hypotheses about the meaning of the child's comments

1. See Endnotes

The purpose of pre-interview preparation is to plan the following:

- (a) questions that could test alternative hypotheses about how the allegations arose, and
- (b) questions that could test alternative interpretations of details stated in the allegation.

For example, if there is an allegation that a babysitter touched a child in a sexual way, an alternative hypothesis is that the touching occurred during routine caretaking (such as wiping after a bowel movement). In this case, after the child states that he or she was touched on the butt by the babysitter, the question, "What were you doing when the babysitter touched you on the butt?" could be the first of a series of questions during the questioning and clarification stage to determine if the babysitter was cleaning the child. Similarly, if the child allegedly told her mother about a "butt licking game," the question, "Who plays the butt licking game?" could test the hypothesis that the game is a joke about the family's new puppy. (See Quick Guide #1: *Sample Questions that Test Alternative Hypotheses and Sample Form*.)

Number of Interviewers

Local customs and requirements often dictate how many professionals will be involved in conducting investigative interviews. There are advantages and disadvantages to both single-interviewer and team (e.g., child protection and law enforcement) approaches. On the one hand, children may find it easier to build rapport and talk about sensitive issues with a single interviewer; on the other hand, team interviewing may ensure that a broader range of topics is covered and reduce the need for multiple interviews.

one professional should be the primary interviewer, with the other taking a supportive role

When two professionals will be present, it is best to appoint one as the primary interviewer, with the second professional taking notes or suggesting additional questions when the interview is drawing to a close. Before conducting the interview, interviewers should have sufficient preparation time to discuss the goals for the interview and the topics that need to be covered; interviewers should not discuss the case in front of the child. At the start of the interview, both interviewers should be clearly introduced to the child by name and job. Seating the second interviewer out of the line of sight of the child may make the interview seem less confrontational.

Support Persons

The presence of social support persons during forensic interviews is discouraged. Although it makes intuitive sense that children might be more relaxed with social support, studies have failed to find consistent or great benefits from allowing support

individuals to be present during interviews (Davis & Bottoms, 2002). Support persons might be helpful during early portions of the interview, but they might also inhibit children from talking about sexual details. Individuals who might be accused of influencing the child to discuss abuse, such as parents involved in custody disputes or therapists, should not be allowed to sit with the child during the interview.

If a support person accompanies the child (a parent or teacher, for example), this individual should be seated out of the child's line of sight to avoid criticism that the child was reacting to nonverbal signals from a trusted adult. In addition, the interviewer should instruct the support person that only the child is allowed to talk unless a question is directed to the support person.

Videorecording or Audiorecording and Documentation

record identifying information

Videorecording or audiorecording policies vary widely. If your county elects to videorecord or audiorecord, follow the procedures suggested below.

A designated person should write on the recording label the interviewer's name, the child's name, the names of any observers, and the location, date and time of the interview. Michigan law states, in part, that *the videorecorded statement shall state the date and time that the statement was taken; shall identify the persons present in the room and state whether they were present for the entire videorecording or only a portion of the videorecording; and shall show a time clock that is running during the taking of the statement* (See Appendix, *Videorecording Laws*). All persons present in the interview room must be clearly visible to the camera and positioned so as to be heard. Rooms should be large enough to place videorecording equipment at an acceptable distance from the child, but not so large that a single camera (or a two-camera setup) cannot monitor the entire room. Recording reduces the need to take notes during the interview. However, the interviewer may bring a list of topics to be discussed during the interview, and may jot down notes during the interview to help remember which points need to be clarified.

If the interview is not being videorecorded or audiorecorded, it is paramount that the interviewer(s) accurately document what the child says. Beginning with introducing the topic, the interviewer should try to write down the exact wording of each question as well as the child's exact words. It is efficient to use abbreviations for common open-ended prompts (e.g., "TWH" for "Then what happened" or "TMMT" for "Tell me more about that").

The Physical Setting

The best environment for conducting forensic interviews is a center specifically equipped for this purpose. Centers often have comfortable waiting rooms with neutral toys, games, and bathroom facilities, as well as interviewing rooms with one-way mirrors and sound hookup to adjoining observation rooms. The interview room should be equipped with a table, chairs, and a cupboard for keeping supplies out of view. The goal of designing an interview room is to provide a relaxing environment that is not unnecessarily distracting to young children. Decorations such as a simple, repetitive wallpaper are cheerful but do not invite inspection by the child.

the interview room should be friendly but uncluttered, free from distracting noises and supplies

Interviewers who do not have access to an interviewing facility should try to arrange a physical setting that recreates some of the important features of specialized centers. First, select the most neutral location possible. For example, a speech-and-language room in a school might be a better choice than the principal's office, because children often believe they are in trouble when they are called to the main office. Similarly, children may worry about being interviewed in a police station, and thus they might benefit from an explanation about why they are being interviewed there (e.g., "We like to talk to children over here because the rooms are nice and bright, and we won't be disturbed"). Second, select locations that are away from traffic, noise, and disruptions; phones, fax machines, or other potential distractions should be temporarily unplugged. Third, the interview room should be as simple and uncluttered as possible (avoid playrooms or other locations with visible toys and books that will distract children). Young children are usually more cooperative in a smaller space that does not contain extra furniture, because they sometimes roam around and bounce on sofas. Moreover, children pay more attention when attractive items such as computers or typewriters are temporarily removed from the interview space. If the interview must be conducted in the home (child is preschool age or on school break), select a private location away from parents or siblings that appears to be the most neutral spot. A child may be intimidated by having his or her parents in the home if neglect or abuse is taking place there.

Interviewer Guidelines

be relaxed and avoid correcting the child's behavior unnecessarily or commenting on the child's reactions to the interview

Several guidelines about interviewer behavior, demeanor and communication should be followed throughout the interview:

- Avoid wearing uniforms or having guns visible during the interview.
- Convey and maintain a relaxed, friendly atmosphere. Do not express surprise, disgust, disbelief, or other emotional reactions to descriptions of the abuse.
- Avoid touching the child.
- Do not use bathroom breaks or drinks as reinforcements for cooperating during the interview. Never make comments like, "Let's finish up these questions and then I'll get you a drink."
- Respect the child's personal space.
- Do not stare at the child or sit uncomfortably close. Older children and teenagers may be more comfortable talking if the interviewer does not sit directly in front of them and does not look directly at them while talking.
- Do not suggest feelings or responses to the child. For example, do not say, "I know how *hard* this must be for you."
- Do not make promises. For example, do not say, "Everything will be okay." Do not say, "You will never have to talk about this again."
- If the child becomes upset, embarrassed, or scared, acknowledge and address the child's feelings, but avoid extensive comments about the child's feelings. Comments such as, "I talk with children about these sorts of things all the time; it's okay to talk with me about this" can be helpful.
- Do not make comments such as "Good girl" or "We're buddies, aren't we?" that might be interpreted as reinforcing the child for talking about abuse issues. Supportive comments should be clearly noncontingent; in other words, encouragements should not be based on the child talking about specific types of issues. The best time to encourage children is during initial rapport building and at the close of the interview, after the conversation has shifted to neutral topics.
- Do not use the words "pretend," "imagine," or other words that suggest fantasy or play.
- Avoid asking questions about why the child behaved in a particular way (e.g., "Why didn't you tell your mother that night?"). Young children have difficulty answering such questions and may believe that you are blaming them for the situation.

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- Avoid correcting the child's behavior unnecessarily during the interview. It can be helpful to direct the child's attention with meaningful explanations (e.g., "I have a little trouble hearing, so it helps me a lot if you look at me when you are talking so that I can hear you"), but avoid correcting nervous or avoidant behavior that is not preventing the interview from proceeding.
 - If you have difficulty understanding what the child said, ask the child to repeat the comment with phrases such as, "What did you say?" or "I couldn't hear that, can you say that again?" instead of guessing (e.g., "Did you say _____?"). Young children will often go along with an adult's interpretation of their words.
 - Be tolerant of pauses in the conversation. It is appropriate to look away and give the child time to continue talking. Similarly, it is often helpful to take a few moments to formulate your next question.
 - Avoid giving gifts to a child.

Conducting a Phased Interview

Most current protocols advise interviewers to proceed through a series of distinct interviewing stages, with each stage accomplishing a specific purpose.² There are several advantages of a *phased* approach to interviewing:

- (a) all interviewers deliver recommended introductions and instructions to children,
- (b) interviewers are encouraged to use less directive methods of questioning, and
- (c) phased approaches facilitate training by breaking the interview process into discrete steps that can be mastered separately.

A phased interview structure minimizes suggestive influences and empowers children to be informative. These goals are accomplished by three major guidelines:

- (a) children receive clear information about the interviewer's job and the ground rules for the interview,
- (b) the interviewer builds rapport in a way that encourages children to talk, and
- (c) the interviewer elicits information using the least directive question formats.

Some investigations involve more than one interview, but interviewers should cover all of the phases even when children have participated in a previous interview.

Although the series of phases is specified, the structure gives the interviewer flexibility to cover any topics the investigative team determines are relevant, in any order that seems appropriate. This protocol describes the general structure of a phased interview but does not dictate which specific questions interviewers will ask.

The interview includes 8 phases:

1. Preparing the Interview Environment
2. The Introduction
3. Establishing the Ground Rules
4. Completing Rapport Building with a Practice Interview
5. Introducing the Topic

a summary of the interview phases appears in Quick Guide #3

2. See Endnotes

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6. The Free Narrative
 7. Questioning and Clarification
 8. Closure

The order of these phases can be varied somewhat from interview to interview depending upon children's initial comments and their ages. For example, some children begin to discuss allegations without prompting. In such cases, the interviewer should not interrupt until it is clear that the child has finished giving a free narrative. Moreover, placement of the ground rules is flexible, and interviewers can remind children about the ground rules at any point during the interview. Some interviewers prefer to establish the ground rules before rapport building. This gives them a chance to review the rules during informal conversation. However, small children may not keep ground rules in mind throughout the interview, so some interviewers introduce the ground rules after initial rapport building. The purpose of the phases is to encourage interviewers to introduce themselves to children, build rapport, deliver age-appropriate instructions, allow children to talk about their lives in their own words, and use follow-up questions to clarify ambiguities in the reports. Within this framework, interviewers can select approaches that match their styles of interviewing, the ages and needs of individual children, and the specifics of individual cases.

Preparing the Interview Environment

The interviewer should remove distracting material from the room and position the chairs and recording equipment before introducing the child to the interview room. It is a good idea to be sure that the child has had a recent bathroom break and is not hungry before beginning the interview. Avoid scheduling an interview at the child's nap time. The interviewer can review the plan for the interview, including a tentative list of hypothesis-testing questions, before bringing the child into the room. (See Quick Guide #1: *Sample Questions that Test Alternative Hypotheses and Sample Form.*)

The Introduction

The purpose of the introduction is to acclimate the child to the interview, modeling a relaxed and patient tone that will be carried throughout the session. Sometimes children were not informed or were misinformed by a parent or caretaker about the circumstances of the interview. When this happens, children are often confused about the purpose of the interview or worried that they are in trouble. Moreover, children take time to adjust to new environments and may be temporarily distracted by the sights and sounds of the interviewing room.

children pay more attention when they are familiar with the environment and have some understanding about what will happen

After the child and the interviewer are seated, the interviewer begins by giving a brief explanation of his/her job and the purpose of the recording equipment. The child should be given an opportunity to glance around the room. School-aged children could even be allowed to inspect the recording equipment if they choose. There are varying decisions about whether or not to introduce the child to observers or let the child view the observation room before the interview.

Introductions can be brief or long, depending upon how relaxed the child appears. The following is a simple example adapted from Sternberg et al. (1997):

Introduction: "Hello, my name is _____. I am a police officer/detective/social worker and part of my job is to talk with children about things that have happened."

Explain recording: "As you can see, I have a video camera/recorder here. It will record what we say. Sometimes I forget things and the recording lets me listen to you without having to write everything down."

Children might be confused about being questioned by a police officer or other professional, so interviewers are free to explain more about their job (e.g., "Do you know what a social worker/police officer does? Well, part of my job is to talk with children and to help them. I talk with a lot of children in [name of town]"). When children seem distressed, it is appropriate to ask them how they are feeling and to provide some orienting information about the interview (e.g., "I talk with a lot of children about things that have happened. We are going to talk for a while and then I'll take you back to the other room where your [mom, dad, etc.] is waiting for you"). The interviewer may want to talk informally to get to know the child.

Establishing the Ground Rules

Studies have shown that children sometimes try to answer questions even when they have no basis for answering or the questions do not make sense (Waterman, Blades, & Spencer, 2002). During the ground rules phase, the interviewer motivates the child to answer accurately with a series of short, simple instructions.

There are no uniform guidelines about the need to discuss truth/lies questions during forensic interviews, but many prosecuting attorneys prefer that interviewers briefly address this issue and get verbal assent that the child intends to tell the truth.

This phase of the interview can be delayed until after the interviewer has built rapport with the child, or omitted if a supervisor advises against truth/lie questions.

During a truth/lie determination, the interviewer demonstrates that the child understands the difference between the truth and a lie by asking the child to label statements as "the truth" or "a lie," after which the interviewer gets a verbal acknowledgment that the child will tell the truth. Interviewers should avoid asking the child to define these concepts with questions such as, "What does it mean to tell a lie?" or "Can you tell me what the truth is?" These questions are difficult for children to answer and often lead to confusion.

use concrete statements such as, "It is raining in the room. Is that true or not true (a lie)?" rather than abstract questions such as, "What does it mean to tell the truth?"

The interviewer may use the following example:

"I am going to say some things. I need you to tell me whether they are true or not true (a lie). 'You took a plane to get here today.' Is that true or not true (a lie)? What is the truth about how you got here today? 'We are sitting down.' Is that true or not true (a lie)? 'You have 6 brothers.' Is that true or not true (a lie)? What is the truth about how many brothers you have?"

Good. I see that you understand the difference between the truth and a lie. Is it good to tell the truth? Is it good to tell a lie? While we are talking today, it is important that you tell me the truth—what really happened. This room is a place where you should always tell the truth. So the first rule is that you are going to tell me only things that are true."

After discussing the truth, the interviewer can introduce other ground rules by saying, "I have a few other rules to talk about today. If I ask you a question you don't understand, I want you to tell me you don't understand. Also, if you do not know the answer to a question, don't guess. For example, what is my cat's name? That's right, you don't know my cat's name, so 'I don't know' is the right answer. The final rule is that I want you to correct me if I make a mistake or say something wrong. For example, you are 8 years old. That's good, you are right to tell me I am wrong because you are 6."

Completing Rapport Building with a Practice Interview

*ask the child to describe a recent
event from beginning to end*

*use open-ended prompts such
as "and then what happened?"*

In daily conversations, adults tend to dominate conversations with children by asking numerous specific questions. Many children therefore expect that interviewers will ask a lot of questions and that their job is to respond to each one with a short answer. The purposes of rapport building are

- (a) to make the child comfortable with the interview setting,
- (b) to get preliminary information about the child's verbal skills and cognitive maturity, and
- (c) to convey that the goal of the interview is for the child to talk.

Transcripts of investigative interviews show that many interviewers build rapport by asking questions about the child's teacher, family, and likes or dislikes. Although such questions are useful for starting the interview, questions that can be answered in one or two words may lead the child to expect that the interviewer will control the conversation. A better technique is to begin with a few focused questions, then shift the discussion to a recent event the child has experienced (e.g., Sternberg et al., 1997). By asking the child to recall a personally-experienced event, the interviewer can gauge the child's verbal skills and communicate that the child is expected to do the talking.

One way to build rapport is to identify—during pre-interview preparation—a specific event that the child recently experienced (or experienced around the time of the alleged abuse). "Training to talk" events could be a birthday party, a recent holiday celebration, an event at school, or a significant family event (e.g., getting a new puppy). The interviewer asks the child to describe this event in detail, using open-ended prompts, and conveys complete fascination with everything the child has to say, as in the following example (Orbach et.al., 2000).

1. "A few days ago (or "a few weeks ago") was Easter (your birthday, Christmas, etc.). Tell me about your Easter (or whatever)."
 2. "I want you to tell me all about Easter (or whatever). Think again about Easter and tell me what happened from the time you got up that morning until the time you went to bed that night (or some incident or event the child mentioned)."
 3. "Then what happened?"
 4. "Tell me everything that happened after (incident mentioned by the child)."
 5. "Tell me more about (something the child just mentioned)."
 6. "It's really important that you tell me everything about things that have happened to you."
-

encourage the child to talk by showing interest and by not interrupting

There are three general principles for rapport building:

- (a) The interviewer tries to elicit information using only open-ended prompts that invite the child to provide multiple-word responses, such as, "Tell me everything about that."
- (b) The interviewer invites the child to be informative with comments such as, "Tell me everything that happened, even little things you don't think are very important" or "Tell me everything that happened, from the very beginning to the very end."
- (c) The interviewer can encourage the child to talk during this phase of the interview with head nods, exclamations (e.g., "Ohhhh"), partial repetitions of the child's last comment (e.g., Child: "And then he opened my present by mistake." Interviewer: "Oh, he opened your present"), or even more direct encouragement (e.g., "You told me a lot about your birthday; I know a lot more about you now").

children who have little to say about specific events may be able to describe a repeated, scripted event

Young children often have little to say about one-time events. If this is the case, it can be helpful to ask the child to describe a recurring, scripted event. A script is a general description of repeated events, such as what the child does to get ready for school each morning, what happens during a trip to the child's favorite fast-food restaurant, or how the child plays a favorite game. The following are examples designed to elicit scripted events:

- 1. "I'd like to get to know a little bit more about you and your family. Tell me what you do every morning when you get ready for school. First you get out of bed—then what do you do? And then what do you do next? Tell me everything from the beginning until you get to school, even little things you don't think are very important. Okay. Then what?"
- 2. "I talk with a lot of children, and most of them really like to get hamburgers or pizza or tacos at their favorite restaurant. Do you have a favorite restaurant? Good. Tell me about everything that happens when you take a trip to _____ to eat _____. Tell me everything that happens, from the very beginning to the very end. First you drive there, right? Then what happens?"

To engage a reluctant child, it may be helpful to express interest in a topic the child is an "expert" on, with the interviewer feigning complete ignorance about the topic:

"I talked with your mom yesterday and she said that you really like to play _____. I don't know anything about that game, but I've heard a lot about it and think that my son might really like to learn how to play it. Tell me all about that game so I'll know all about it too."

During the rapport phase, interviewers can encourage a reluctant child with comments such as, "It is okay to start talking now" or "This is your special time to talk. I want you to be the talker today and I'll listen."

Introducing the Topic

The substantive portion of the interview begins when the interviewer prompts a transition to the target topic. Interviewers should start with the least suggestive prompt that might raise the topic, avoiding mention of particular individuals or events. The following examples are from Poole and Lamb (1998):

start with the least suggestive prompts that might raise the topic of abuse (See Quick Guide #4)

1. "Now that I know you a little better, it's time to talk about something else. Do you know the reason you are here today?"
2. "Now that we know each other a little better, I want to talk about the reason that you are here today. Tell me the reason you came to talk with me today."
3. "Now it's time to talk about something else. I understand there are some problems in your family (or, I understand that some things have been happening at camp). Tell me about them."
4. "I know that you had to move recently, and Mr./Mrs. _____ is taking care of you now. Tell me how that happened."

Avoid words such as *hurt*, *bad*, *abuse*, or other terms that project adult interpretations of the allegation. If the child does not respond to these neutral prompts, the interviewer progresses to more specific opening remarks, still avoiding mention of a particular behavior. Examples include the following:

1. "I understand something has been bothering you."
 2. "Does your mom think that something has been bothering you?"
 3. "I understand you were playing with someone yesterday and your teacher wanted you to stop playing. I'm really interested in the kinds of games that children play—tell me how you were playing."
-

Some interviewers use the techniques listed below when children fail to respond to the above invitations:

1. The interviewer can ask what the child's favorite thing and least favorite thing is about various people in his or her life (Morgan, 1995).
2. Alternatively, the interviewer can ask, "Who are the people you like to be with?" and "Who are the people you don't like to be with?" (Yuille, Hunter, Joffe, & Zaparniuk, 1993).
3. The interviewer might explore the topic indirectly by asking, "Is there something you are worried about if you talk with me today?"
4. It can be helpful to give the child some control over the interview by changing the seating, removing a second interviewer, or letting the child write an initial answer on paper. The interviewer can explore the child's feelings about such things by asking a question like, "Is there something that would make it easier for you to talk with me today — would you rather sit someplace else or have me sit someplace else?"

The goal of these techniques is to avoid asking the child a direct question, such as, "Did somebody touch your privates last week?" Research shows some children (particularly preschoolers or children who have heard events discussed by adults) will say "yes" to these direct questions even when the events have not occurred (Myers et al., 2003; Poole & Lindsay, 2002). Consequently, answers to direct questions are less informative than answers to open-ended questions. Furthermore, direct questions about touching may elicit responses about routine caretaking (e.g., bathing, temperature-taking) or other sources of knowledge (e.g., information from a recent sexual abuse prevention program) that could escalate into false allegations, especially when these questions are followed by numerous specific questions. If the interviewer asks a direct question, it is important to shift to open-ended questions that encourage the child to describe events in his or her own words.

closing the interview without a report of abuse is an acceptable outcome

Closing the interview without a report of abuse is an acceptable outcome. There are many reasons why a child may not disclose: because the abuse didn't occur, because the child is frightened or does not want to get a loved one in trouble, or because the event was not especially memorable and the child is not recalling the target event at this particular moment. The investigative team needs to decide in advance how directly a child should be prompted, taking into consideration the amount of corroborating evidence and the risk to the child from failing to obtain a disclosure.

The Free Narrative

After the topic is raised, the interviewer asks the child to provide a narrative description of the event. Research shows that children's responses to open-ended prompts are longer and more detailed than responses to focused questions (e.g., Lamb et.al., 2003; Orbach & Lamb, 2000). Answers to open-ended questions are more accurate than answers to focused questions because many children answer focused questions even when they do not remember relevant information (e.g., Poole & Lindsay, 2001). The most common interviewer errors are omitting the free narrative phase or shifting prematurely to specific questions.

To elicit a free narrative, the interviewer simply tacks on an open invitation after raising the topic:

1. "Tell me everything you can about that."
2. "I want to understand everything about that. Start with the first thing that happened and tell me everything you can, even things you don't think are very important."
3. "Tell me all about that, from the very beginning to the very end."

encourage the child to describe the event in his or her own words by using open-ended invitations such as, "Tell me everything you can about that"

After the child begins talking, the interviewer should be patient about pauses in the conversation and not feel pressured to jump to another prompt right away. The child's free narrative can be encouraged with open-ended comments such as, "Then what?", "Tell me more about that," or "What else can you tell me about that?" The interviewer can also motivate the child with neutral acknowledgments (e.g., "uh huh"), by repeating the child's comments (e.g., Child: "And then he turned on the TV," Interviewer: "He turned on the TV") or by giving the child permission to talk about the target issues (e.g., Child: "And then he...", Interviewer: "It's okay to say it"). When necessary, the interviewer can remind the child that he or she is used to talking about such things, perhaps with a comment such as, "I talk with a lot of children about these sorts of things. It's okay to tell me all about it, from the very beginning to the very end."

be tolerant of pauses in the conversation

If a child becomes non-responsive or upset, acknowledge the child's behavior and address it, but avoid extensive comments. Give the child time to respond or to regain composure. If a child remains non-responsive, it may help to gently tell the child, "You've stopped talking." He or she may then respond. If a child remains upset, it may help to restate the child's last statement or ask the child to tell you the reason that he or she is upset.

Questioning and Clarification (See Quick Guides #5 and #6)

Children often make comments that adults do not understand or refer to people who have not yet been identified. Interrupting the child to request an immediate clarification may inhibit the child from talking. It is better to encourage the child by using general prompts such as "Then what?" before attempting to clarify information by entering the questioning and clarification phase. Interviewers can jot down short notes while the child is talking to remind themselves to revisit specific information later in the interview.

The questioning phase begins after it is clear that the child has finished providing a free narrative. Throughout this phase, the interviewer should follow the guidelines for developmentally-appropriate questions that are listed in Quick Guide #2: *Guidelines for Questioning Children*, at the end of this Protocol.

The questioning phase is a time to seek legally-relevant information and to clarify the child's comments. (Also, see Quick Guide #5: Sample Question Frames.) Interviewers should avoid jumping from topic to topic. In general, it is best to build the questioning phase around the child's free narrative. For example, if the child reported a single event, the interviewer would clarify information about that event before asking whether there have been other similar events.

During questioning and clarification, the interviewer should make sure that the description of the allegation and the identity of the perpetrators are clear, explore whether there was a single event or multiple events, and determine whether there were other witnesses or whether the child witnessed similar events happening to other children. Other topics may be important, depending upon the specific case, such as descriptions of physical evidence retrieved from the crime scene (e.g., a description of cameras if pictures were taken). However, interviewers should avoid probing for unnecessary details because children may contradict themselves if interviewers ask for information that is not remembered well. For example, it is not essential to get a detailed description of an alleged perpetrator and his clothing if the accused is someone who is familiar to the child (e.g., a relative or teacher). Although it is useful if the child can recall when and where each event occurred, children may have difficulty specifying this information if they are young, if the event happened some time ago, or if there has been ongoing abuse over a period of time. The section in this Protocol entitled "Special Topics" discusses general guidelines for investigating the time element in child criminal sexual conduct cases.

use the least suggestive question possible, working for a complete description of one event before shifting to a different topic (see Quick Guide #6)

when prompting the child to tell you "everything," be aware that delayed disclosure and disclosure in stages can occur

complete information in one interview may not always be possible

Interviewers should always use the most open-ended questions possible during questioning and clarification. If a specific question is necessary to raise an issue, interviewers should try to continue with an open-ended question. For example, if objects were retrieved from the scene of the alleged events, the question, "Did he bring anything with him when he came to see you?" might be followed by "Tell me what those things looked like." Following the terminology used in the *Memorandum of Good Practice* (Home Office, 1992), questions can be ordered along a continuum from least suggestive (open-ended questions) to most suggestive (leading questions). The following hierarchy describes this progression of question types; interviewers should try to use questions at the top of the hierarchy and avoid leading questions altogether. (Also, see Quick Guide #6: *The Hierarchy of Interview Questions*.)

Open-ended questions/prompts allow children to select which details they will report, and these prompts generally require multiple-word responses. Open-ended prompts ask children to expand, (e.g., "You said he hit you with a belt. Tell me everything about that"), provide physical descriptions (e.g., "What did the belt look like?"), and clarify apparent contradictions (e.g., "You said you were alone, but then you said your mom heard you talking. I'm confused about that ...can you tell me about that again?"). Open-ended prompts can also elicit information about physical surroundings and conversation. For example, even preschoolers can respond accurately to the following prompts (Poole & Lindsay, 2001, 2002):

"Sometimes we remember a lot about how things looked. Think about all the things that were in the room where (e.g., _____ hit you). Tell me how everything looked."

"Sometimes we remember a lot about sounds and things that people said. Tell me all the things you heard when (e.g., _____ hit you)."

Specific but nonleading questions ask for details about information the child has already mentioned, and these questions can be answered with a word or brief comment. Specific but nonleading questions might ask about the context of an event (e.g., "Tell me what you were doing when...?"), request clarification (e.g., "You said 'Bob.' Who is Bob?"), or ask about a specific detail (e.g., "What color was the towel?").

Closed questions provide only a limited number of response options. Multiple-choice questions and yes-no questions are closed questions. These questions are more risky than open-ended or

specific questions because children sometimes feel they should choose one of the options. Therefore, responses are generally less accurate to these questions than to more open-ended questions. If the interviewer wants to confirm a specific detail of an allegation and the child seems confused by open-ended or specific questions, it is best to delete the correct answer from a multiple-choice question. If an event happened in the bathroom, for example, the interviewer might ask, "Where did that happen, in the bedroom, the kitchen, or in another place?" Closed questions should be followed by open-ended questions to show that the child can provide information spontaneously. Because yes-no questions are considered inherently leading by some experts, such questions should be used with caution, particularly with preschoolers. When yes-no questions are deemed necessary, it is useful to remind children that they should not guess.

Leading questions imply an answer or assume facts that might be in dispute. In practice, there is no single definition of a leading question. Determination of whether a question is leading depends upon a host of variables, including the child's age, maturity, and the tone of voice of the interviewer (Fallon & Pucci, 1994). Tag questions such as, "And then he touched you, didn't he?" are explicitly leading, as is any question that includes information the child has not yet volunteered.

During this phase, the interviewer should continually monitor that the child's statements are unambiguous. If the child talks about "Grandpa," for example, the interviewer should determine which individual is being discussed (e.g., "Which grandpa?" "Does Grandpa have another name?" "Do you have one grandpa or more than one grandpa?"). Similarly, if the child uses an unusual word (e.g., "my hot dog," "my tushee"), the interviewer should attempt to clearly identify what that word means to the child (e.g., "Tell me what your wiener is").

young children may stray off topic and begin to discuss other events during this phase of the interview

Because young children often stray off topic and begin to discuss other events during this phase of the interview, it is important that the interviewer reiterate the topic under discussion. For example, it is very helpful to begin questions with identifying comments such as, "About this time in the kitchen with Uncle Bill, ...". If the child reports new or unusual information, it is best to ask something like, "Are you talking about that time Timmy grabbed your privates, or is this another time?" It is easier for children to stay on topic if the interviewer warns the child when the topic is shifting (e.g., "I'm confused about that time in the park. Let me ask you something about that ..."). Another strategy

to avoid confusion is to verbally label events that the interviewer might want to return to later in the interview (e.g., "Okay, let's call that the kitchen time.") (Yuille et al., 1993).

Interviewers should avoid covering topics in a predetermined order. Instead, interviewers should follow the child's train of thought and ask questions that are related to the child's narrative at that point in the interview. In sexual abuse cases, the interviewer may need to ask whether the alleged event happened one time or more than one time, whether the child has knowledge that other children had a similar experience, and whether other individuals were present. Before closing the interview, all references to people and events should be clarified to ensure that there is only one interpretation of the child's comments.

Questioning and clarification is the most difficult phase of the interview. The interviewer has to listen to the child, mentally review the information already provided, make decisions about further questioning, and decide when to close the interview. Interviewers should maintain a relaxed manner and feel free to take a few minutes to collect their thoughts before deciding how to proceed. If there is a second interviewer or team members in an adjoining observation room, the interviewer can ask these individuals whether or not they have any additional questions before closing the interview.

Closure

If the child made a disclosure, the interviewer can begin the closure phase of the interview by asking, "Is there something else you'd like to tell me about (event the child described)?" Regardless of the outcome of the interview, the interviewer can ask, "Are there any questions you would like to ask me?" It is appropriate to chat about neutral topics for a few minutes to end the interview on a relaxed note. The interviewer can thank the child for coming but should be careful not to specifically thank the child for disclosing abuse. In addition, it is important to avoid making promises that might not be kept (for example, saying that the child will not have to talk about the abuse again). A school-aged child or an accompanying adult may be given a contact name and phone number in case they later think of something they want to add.

Special Topics

Questions about Time

There are several reasons why it can be very difficult for children to describe *when* an event happened. In their language development, children learn words that mark temporal relationships only gradually. Three-year-olds, for example, often use "yesterday" to mean "not today," and the words "before" and "after" are poorly understood before 7 years of age or even older. Regarding temporal concepts, children's understanding of dates and clock time is limited before 8-10 years of age. Often, children simply fail to remember exactly when target events occurred. Memory failure is common when events occurred a long time ago and when there were many similar events.

Interviewers should try to identify when events occurred, but young children sometimes answer inaccurately when questions demand details they cannot provide. For example, children sometimes try to answer questions about the day of the week or the time of day even when they are uncertain. Therefore, interviewers should try to determine when events occurred by asking about the context of the events. General questions about what grade the child was in or whether it was summer vacation can narrow down the time. Similarly, knowing that the child was playing with a toy received for Christmas will date the event after Christmas, and questions about what TV show the child was watching will identify a time of day. Some interviewers ask children to point to a "time line" that contains pictures of holidays and other events, but there is no evidence that preschool children report the timing of past events more accurately with this aid than with developmentally-appropriate verbal questions (Malloy & Poole, 2002).

Interviewers should be aware that time is not an element in child sexual conduct cases in Michigan, and thus it may be unnecessary to narrow down the time of an event beyond specifying a period of several months (e.g., during summer vacation). The Michigan Court of Appeals set forth four factors to consider when determining how specific the time of assault must be: the nature of the crime charged, the victim's ability to specify a date, the prosecutor's efforts to pinpoint a date, and the prejudice to the defendant in preparing a defense (*People v. Naugle*, 152 Mich. App 227, 233; 393 NW2d 592 1986).

Interviewing Aids

Because young children sometimes provide little information in response to open-ended questions, interviewers occasionally use interviewing aids, such as anatomical dolls and body outlines, to elicit information about alleged abuse.

Guidelines on anatomical dolls and drawings state that children's responses to visual aids are not diagnostic of abuse. Consequently, interviewers can be accused of suggesting sexual themes if they introduce aids before children have mentioned abuse (Poole & Lamb, 1998). It is less controversial to introduce aids during the questioning and clarification phase of the interview, when aids help to clear up ambiguities in children's reports (Everson & Boat, 2002). (For examples of anatomical drawings, see Groth & Stevenson, 1990.)

To access anatomical drawings that are available on the Prosecuting Attorneys Association of Michigan (PAAM) website:

- log on to www.micats.org
- click on "child abuse resources"
- click on the drawing you would like to access and print

Interviewers should avoid using anatomical dolls with very young children. One problem is that dolls are models that represent something else. To use an anatomical doll, a child must realize that the doll is an object itself and also a representation of the child. But children between the ages of 2 and 4 years may not have the cognitive skills to appreciate the representational purpose of dolls (DeLoache, 1995). As a result, dolls often do not improve the quality of the information obtained from young children (e.g., Lamb et al., 1996; Pipe, Salmon, & Priestly, 2002).

Special Communication Issues

Interviewers should identify whether children have special communication issues that require accommodation during their interview preparation.

Separate developmental assessments are not routinely required or useful, but they may be helpful for children who suffer from a developmental disability or have a language limitations that raise questions about their ability to respond accurately to questions. The following summary is based on a longer discussion by Poole and Lamb (1998).

Preschoolers. Whenever possible, interviews with preschool children should be scheduled for a time of the day when the children are usually alert and have recently had a snack. No special

adjustments to the interview protocol are required for preschool children, but interviewers should be aware that young children are more likely to attempt answers to closed questions than are older children. When interviewers use closed questions with young children, it is helpful to demonstrate that they are not simply going along with the social pressures of the interview. For example, omitting the correct answer from multiple choice questions will reduce concerns about acquiescence.

Bilingual Children. During pre-interview preparation, interviewers should make their best determination of the child's primary language based on information from available sources, such as official records, consultations with parents or school officials, and the child's self-report. Arrangements should be made for an interpreter of the child's primary mode of communication whenever there is concern that a child faces limitations in understanding or speaking English.

Visual Impairments. Children who have experienced vision loss before the age of 5 years frequently have delays in the development of language concepts. These children may have difficulty with personal and possessive pronouns (e.g., *her* versus *their*), and they may use words inconsistently across contexts. Because some of these children show echolalia, or a tendency to repeat the last phrases spoken to them, interviewers should avoid asking questions that can be answered by partial repetition. Additionally, a high proportion of children with vision impairments also have hearing loss or other handicaps, so interviewers should ask about additional problems if they determine that a child has a visual impairment.

Hearing Impairments. Children with hearing impairments differ widely in degree of hearing loss, the age at onset of loss, the degree to which they benefit from amplification, and their primary mode of communication (American Sign Language, Signed English, reading speech, etc.). As a general rule, a language specialist should be consulted about the child's primary mode of communication and facility with language. An interpreter, if needed, should not be an individual who might have an interest in the outcome of the case. Because children with hearing impairments tend to be poor at written English, writing generally is not an acceptable communication option for a forensic interview. Many authors report that children with hearing impairments are more impulsive than other children about responding, so interviewers should take care to warn these children about the ground rules for the interview.

Augmentative and Alternative Communication (AAC).

AAC includes any system that supplements or replaces traditional communication modes, including communication by eye gaze, picture boards, or computer-based technologies. The professional who has had the most contact with the child (and/or the development of the child's communication system) and an independent specialist should be involved in evaluating the needs of children who communicate via AAC.

Developmental Disabilities. As a group, children who are developmentally disabled are more likely to respond randomly to yes-no questions and to provide inaccurate information to specific questions. Care should be taken during the rapport building and ground rules phases of the interview to ensure that the child can report a past event and does not tend to make up responses to more specific questions. If there is serious uncertainty about the accuracy of the child's information, preliminary assessments may be helpful to identify how well the child discusses past events and how the child responds to various types of questions.

Quick Guide #1: Sample Questions that Test Alternative Hypotheses and Sample Form

Alternative Hypotheses about the Allegation

touching occurred during routine caretaking:

Examples: What were you doing when Bryan touched you?
What was Bryan doing when he touched you?
What did Bryan say after he touched you? (to elicit threats or promises about secrets)

child now claims that the touching was an innocent mistake:

Example: I'm interested in learning more about your teacher. How did you get along with your teacher before all this trouble started? When did you first start feeling close to your teacher (after child states that she feels very close to her teacher)? What did you and your teacher do together next? (to elicit information about grooming)

child is acting out sexually due to influences other than sexual abuse (child calls the reenactment a "game"):

Example: Tell me about the game. Tell me about the first time you played the game. Did you make this game up? Did you see the game somewhere?

teenager made an allegation out of anger and is embarrassed to retract it:

Example: Remember that we are here to talk about the truth today, so you are right to say whatever is true. Sometimes teenagers tell when someone hurt them because it happened, but sometimes there has been a big misunderstanding. Did that really happen (child's report, such as, "your mom pushed you into the cupboard when she was angry") or was there a misunderstanding about that?

Alternative Hypotheses about Details Reported During the Interview

a name:

Example: Do you have one daddy or more than one daddy? Which daddy (child's words)?

report spins off in an unexpected direction:

Example: Are you talking about the time Sandy left you alone while she went shopping, or are you talking about something different now?

a sexual term:

Example: You said that you watched Sandy and Joe have sex. Tell me what people do when they have sex (because children often call kissing "sex").

claim that abuse happened "all the time":

Example: Tell me about the last time Joe ____ (with probes for contextual detail after the child's free narrative; this line of questioning helps establish that there was opportunity and that the child can report discrete episodes). Tell me about the first time Joe _____. Tell me about the time you remember best (with probes for contextual detail after the child's free narrative).

Sample Form: Alternative Hypotheses Documentation/Testing

Hypothesis [Allegations] --

Alternative Hypotheses--	How Tested--

Quick Guide #2: Guidelines for Questioning Children

(Poole & Lamb, 1998. Adapted with permission from the American Psychological Association. For expanded discussions, see Walker, 1999.)

Understanding the Child

- If you cannot understand something the child said, ask the child to repeat the comment. Try not to guess with comments such as, "Did you say 'Bob'?"
- Children often make systematic pronunciation errors; for example, *potty* may sound like *body* or *something* may sound like *some paint*. Do not take young children's comments at face value; instead, always try to clarify what the child was saying by asking the child to describe the event fully (e.g., "I'm not sure I understand where he peed; tell me more about where he peed") or asking for an explicit clarification (e.g., "Did you say 'Bob' or 'mom' or some other person?").
- When talking, use the usual adult pronunciation for words; do not mimic the child's speech or use baby-talk. (Exception: Do use the child's words for body parts.)
- The child's meaning for a word may not be the same as the adult's meaning. Some children use particular words in a more restrictive way (e.g., *bathing suits* or *pajamas* may not be clothing to a young child), a more inclusive way (e.g., *in* often means *in* or *between*), or in a way that is peculiar to them or their families (e.g., a *penis* is called a *bird*). Words that are critical to identifying an individual, event, or object should be clarified.
- Children may seem to contradict themselves because they use language differently than adults. For example, some children think that you only *touch* with your hands. Therefore, they may say "no" to questions such as "Did he touch you?," but later report that they were kissed. Children also tend to be very literal. For example, they might say "no" to the question, "Did you put your mouth on his penis?" but later respond "yes" to the question, "Did he put his penis in your mouth?" Interviewers should try to anticipate how a child will interpret a question and vary the phrasing of questions to check the child's understanding of the concept.

Avoid Using Difficult Words or Introducing New Words

- Children under the age of about 7 years have difficulty with temporal words such as *before* and *after*. Try to narrow down the time of an event by asking about other activities or events, such as whether it was a school day or not a school day, or what the child was doing that day.

-
- Young children are often confused by kinship terms (e.g., *uncle*, *aunt*), and word pairs such as *come/go*, *here/there*, and *a/the*.
 - Even school-aged children often do not understand common legal terms, such as *judge*, *jury*, or *hearing*. Avoid legal terms or other adult jargon.
 - Children often integrate new words into their narratives, so avoid introducing key words, names, or phrases that the child has not yet volunteered.

Phrasing Questions

- Questions should ask about only one concept at a time. Avoid multiple questions.
- Use a noun-verb-noun order. In other words, use the active voice (e.g., "You said earlier that you hit him ...") rather than the passive voice (e.g., "You said earlier that he was hit by you ...")
- Do not use "tag" questions such as, "And then he left, didn't he?"
- Words such as *she*, *he*, *that*, or *it* can be ambiguous to a child, even when these words are in the same sentence as their referents (e.g., "So when she came home, did mom take a nap?"). Be redundant and try to use the referent as often as possible (e.g., say, "So after *your father pushed you*, then what happened?" rather than, "So after he did *that*, then what happened?").
- Children learn to answer *who*, *what*, and *where* questions earlier than *when*, *how*, and *why* questions.

Cultural Considerations

- If a child is from a different culture, the interviewer should try to confer with someone from that culture to see if special cultural considerations should be understood prior to the interview.
- Children are discouraged in some cultures from looking authority figures in the eye while answering. Avoid correcting children's nonverbal behavior unless that behavior interferes with your ability to hear the child.
- Interviewers should be aware that some cultural groups discourage children from correcting or contradicting an adult, and children from these environments may be more likely to answer multiple-choice or yes-no questions even when they are uncertain.

Quick Guide #3: Overview of a Phased Interview

(Poole & Lamb, 1998. Adapted with permission from the American Psychological Association.)

Preparing the Environment

- Review questions that will test alternative hypotheses about how the allegation arose.
- Remove distracting materials from the room.
- Record identifying information on videorecorded statement (see p. 4), if used.

The Introduction Hello, my name is

- Introduce yourself to the child by name and occupation.
- Explain the recording equipment if used and permit the child to glance around the room.
- Answer spontaneous questions from the child.

Establishing the Ground Rules Before we talk some more, I have some simple rules for talking today.

- Get a verbal agreement from the child to tell the truth.
- Remind the child that he/she should not guess at an answer.
- Explain the child's responsibility to correct the interviewer when he/she is incorrect.
- Allow the child to demonstrate understanding of the rules with practice questions (e.g., "What is my dog's name?").

Completing Rapport Building with a Practice Interview I'd like to get to know you a little better now.

- Ask the child to recall a recent significant event or describe a scripted event (e.g., what he/she does to get ready for school each morning or how he/she plays a favorite game).
- Tell the child to report everything about the event from beginning to end, even things that might not seem very important.
- Reinforce the child for talking by displaying interest both nonverbally and verbally (e.g., "Really?" or "Ohhh").

Introducing the Topic Now that I know you a little better...

- Introduce the topic, starting with the least suggestive prompt.
- Avoid words such as *hurt*, *bad*, or *abuse*.

The Free Narrative Tell me everything about that, even little things you don't think are very important.

- Prompt the child for a free narrative with general probes such as, "Tell me everything you can about that."
- Encourage the child to continue with open-ended prompts such as, "Then what?" or "Tell me more about _____."

Questioning and Clarification I want to make sure I understand everything that happened.

- Cover topics in an order that builds upon the child's prior answers to avoid shifting topics during the interview.
- Select less directive question forms over more directive questions as much as possible.
- Do not assume that the child's use of terms (e.g., "Uncle" or "pee pee") is the same as an adult's.
- Clarify important terms and descriptions of events that appear inconsistent, improbable or ambiguous.
- Ask questions that will test alternative explanations for the allegations.

Closure Is there something else you'd like to tell me about _____? Are there any questions you would like to ask me?

- Ask if the child has any questions.
 - Revert to neutral topics.
 - Thank the child for coming.
-

Quick Guide #4: Introducing the Topic

This is a hierarchy of question types from the least suggestive to most suggestive. Whenever possible, select questions from the top of the hierarchy. Interviewers should start with the least suggestive prompt that might raise the topic. Start with a transitional statement such as, "Now that I know you a little better, it is time to talk about something else," then follow-up with one or more of the following suggestions listed below.

Do you know the reason you are here today?
or
Tell me the reason you are here today.

IF ANSWER IS "I DON'T KNOW."

It is important for me to understand the reason you came to talk to me today.

I talk to kids about things that have happened. Tell me what's happened to you.

Tell me the reason_____doesn't live with you anymore.

As I told you, my job is to talk to kids about things that have happened to them. It is very important that I understand the reason you are here. Tell me why you think your mom (dad, etc.) brought you here today.

Is your *mom* (dad, etc.) worried that something may have happened to you? Wait for a response. If it is affirmative say, "Tell me what they are worried about."

I heard that someone has been bothering you. Tell me about what happened.

I heard that something might have happened to you. Tell me all about what happened.

IF CHILDREN DO NOT RESPOND TO ANY OF THE ABOVE AND QUESTIONS MUST BE EVEN MORE FOCUSED:

I heard you told_____something. Tell me what you talked about.

I heard that you saw a policeman (social worker, doctor, etc.) last week (yesterday). Tell me what you talked about.

I heard that something might have happened to you at_____(location or time of alleged incident).

I heard that someone might have_____(brief summary of allegation without mentioning name of perpetrator).

REMEMBER TO FOLLOW UP THE ANSWER WITH:

Tell me all about_____.

Quick Guide #5: Sample Question Frames

(Poole & Lamb, 1998. Adapted with permission from the American Psychological Association.)

Familiarity with a list of flexible question frames can help interviewers ask follow-up questions that are not leading.

Elaboration

"You said _____. Tell me more about that."

"And then what happened?"

"Sometimes we remember a lot about sounds or things that people said. Tell me all the things you heard _____ (when that happened, in that room, etc.)"

"Sometimes we remember a lot about how things looked. Tell me how everything looked _____ (when that happened, in that room, etc.)"

Clarification

Object or action: "You said _____. Tell me what that is."

Ambiguous person: "You said _____ (Grandpa, teacher, Uncle Bill, etc.). Do you have one or more than one _____?"

"Which _____?"

"Does your _____ have another name?" (or "What does your _____ [mom, dad, etc.] call _____?")

Inconsistency

"You said _____ but then you said _____. I'm confused about that. Tell me again how that happened."

"You said _____, but then you said _____. Was that the same time or different times?"

Repairing Conversational Breaks

"Tell me more about that."

"And then what happened?"

Embarrassed Pause

"It's okay to say it."

"It's okay to talk about this."

Inaudible Comment

"I couldn't hear that. What did you say?"

Single or Repeated Event

"Did it happen one time or more than one time?"

(if child says, "Lots of times"):

"Tell me about the last time something happened. I want to understand everything from the very beginning to the very end." "Tell me about another time."

Quick Guide #6: The Hierarchy of Interview Questions

(Poole & Lamb, 1998. Adapted with permission from the American Psychological Association.)

This is a hierarchy of question types from least suggestive to most suggestive. **Whenever possible, select questions from the top of the hierarchy.**

Free Narrative and Other Open-Ended Questions

Free-narrative questions are used after the topic has been introduced, to encourage children to describe events in *their own* words.

Examples: "Tell me everything you can about _____."
"Start with the first thing that happened and tell me everything you can, even things you don't think are very important."

Open-ended questions allow children to select the specific details they will discuss. Open-ended questions encourage multiple-word responses.

Examples: "You said he took you into a room. Tell me about all of the things that were in that room."
"You said, 'That other time.' Tell me about that other time."

Specific but Nonleading Questions

Specific but nonleading questions ask for details about topics that children have already mentioned. Use these questions only when the details are important, because children often try to answer specific questions even when they do not know the relevant information.

Examples: "What were you doing when he came over?"
"What did your mom say after you told her?"

Closed Questions

Closed questions, which provide only a limited number of options, are used when children do not respond to open-ended questions, when there is no obvious open-ended question that will elicit the desired information, or when a specific question is developmentally inappropriate. (For example, the question "How many times did that happen?" is difficult for young children.) Multiple-choice questions, particularly when they have more than two options, are preferable to yes-no questions because they permit a wider range of responses. Interviewers should try to follow closed questions with less directive prompts.

Examples of multiple-choice questions:

"Did that happen one time or more than one time?" (Follow-up prompt: "Tell me about the last time that happened.")

(Interviewer, "Where did that happen?" Child, "I don't know.") "Did that happen at your house, at Grandpa's house, or some other place?" (Follow-up prompt: "Who else was at Grandpa's house that day")

Example of a yes-no question:

"Was your mom home when that happened?" (Follow-up prompt: "Tell me what your mom was doing.")

Explicitly Leading Questions

Explicitly leading questions suggest the desired answer or contain information that the child has not yet volunteered. Even yes-no questions are considered leading by many psychologists, particularly if the child is young or the interviewer does not reiterate the child's right to say "no." Leading questions should be avoided during forensic interviews.

Examples of inappropriate questions:

"You told your mom you were scared of him, didn't you?"

"Did he have his pants on or off when he laid next to you?" (when the child did not mention that he laid down).

End Notes

¹There are no fixed guidelines about how much information interviewers should gather before meeting with a child. An interview is conducted "blind" when the interviewer knows only the child's name and age. The goal of a blind interview is to reduce the possibility that the interviewer can direct the child to confirm the allegations by asking specific or leading questions. There are a variety of reasons why most experts oppose blind interviews. First, it is difficult for interviewers to develop rapport with children when they know nothing about their living situations or interests. Second, because some children will not respond to general questions about why they are being interviewed, it is difficult for interviewers to introduce the topic of abuse when they know nothing about the place or timing of the alleged abuse. Third, blind interviewing makes it more difficult for interviewers to consider alternative hypotheses about the meaning of children's statements. Information about recent medical treatment, adults in a child's life who have duplicate names (e.g., two grandpas), and the child's caretaking environments and playmates can help interviewers understand what a child is describing. For these reasons, the National Center for Prosecution of Child Abuse, the American Prosecutor's Research Institute, and the National District Attorney's Association (1993, p. 59) concluded, "Interviewing a child without knowing any of the details revealed to another is analogous to performing a medical examination without knowing the patient's history or looking for an unfamiliar destination without a road map."

²A variety of terms are used to describe this progression from introduction to closing, including *step-wise* (Yuille, Hunter, Joffe, & Zaparniuk, 1993), *funnel* (Sternberg et al., 2002), and *phased approaches* (Bull, 1995).

Appendix

VIDEORECORDING LAWS

Criminal Statute

MCLA 600.2163a Definitions; prosecutions and proceedings to which section applicable; use of dolls or mannequins; support person; notice; videorecorded statement; special arrangements to protect welfare of witness; videotape deposition; section additional to other protections or procedures; violation as misdemeanor; penalty.

Sec. 2163a. (1) As used in this section:

(a) "Custodian of the videorecorded statement" means the department of human services, investigating law enforcement agency, prosecuting attorney, or department of attorney general or another person designated under the county protocols established as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628.

(b) "Developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, except that, for the purposes of implementing this section, developmental disability includes only a condition that is attributable to a mental impairment or to a combination of mental and physical impairments and does not include a condition attributable to a physical impairment unaccompanied by a mental impairment.

(c) "Videorecorded statement" means a witness's statement taken by a custodian of the videorecorded statement as provided in subsection (5). Videorecorded statement does not include a videorecorded deposition taken as provided in subsections (17) and (18).

(d) "Witness" means an alleged victim of an offense listed under subsection (2) who is either of the following:

(i) A person under 16 years of age.

(ii) A person 16 years of age or older with a developmental disability.

(2) This section only applies to prosecutions and proceedings under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328.

(3) If pertinent, the witness shall be permitted the use of dolls or mannequins, including, but not limited to, anatomically correct dolls or mannequins, to assist the witness in testifying on direct and cross-examination.

(4) A witness who is called upon to testify shall be permitted to have a support person sit with, accompany, or be in close proximity to the witness during his or her testimony. A notice of intent to use a support person shall name the support person, identify the relationship the support person has with the witness, and give notice to all parties to the proceeding that the witness may request that the named support person sit with the witness when the witness is called upon to testify during any stage of the proceeding. The notice of intent to use a named support person shall be filed with the court and shall be served upon all parties to the proceeding. The court shall rule on a motion objecting to the use of a named support person before the date at which the witness desires to use the support person.

(5) A custodian of the videorecorded statement may take a witness's videorecorded statement before the normally scheduled date for the defendant's preliminary examination. The videorecorded statement shall state the date and time that the statement was taken; shall identify the persons present in the room and state whether they were present for the entire videorecording or only a portion of the videorecording; and shall show a time clock that is running during the taking of the videorecorded statement.

(6) A videorecorded statement may be considered in court proceedings only for 1 or more of the following:

(a) It may be admitted as evidence at all pretrial proceedings, except that it may not be introduced at the preliminary examination instead of the live testimony of the witness.

(b) It may be admitted for impeachment purposes.

(c) It may be considered by the court in determining the sentence.

(d) It may be used as a factual basis for a no contest plea or to supplement a guilty plea.

(7) In a videorecorded statement, the questioning of the witness should be full and complete; shall be in accordance with the forensic interview protocol implemented as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628; and, if appropriate for the witness's developmental level, shall include, but is not limited to, all of the following areas:

(a) The time and date of the alleged offense or offenses.

(b) The location and area of the alleged offense or offenses.

(c) The relationship, if any, between the witness and the accused.

(d) The details of the offense or offenses.

(e) The names of any other persons known to the witness who may have personal knowledge of the alleged offense or offenses.

(8) A custodian of the videorecorded statement may release or consent to the release or use of a videorecorded statement or copies of a videorecorded statement to a law enforcement agency, an agency authorized to prosecute the criminal case to which the videorecorded statement relates, or an entity that is part of county protocols established under section 8 of the child protection law, 1975 PA 238, MCL 722.628. The defendant and, if represented, his or her attorney has the right to view and hear a videorecorded statement before the defendant's preliminary examination. Upon request, the prosecuting attorney shall provide the defendant and, if represented, his or her attorney with reasonable access and means to view and hear the videorecorded statement at a reasonable time before the defendant's pretrial or trial of the case. In preparation for a court proceeding and under protective conditions, including, but not limited to, a prohibition on the copying, release, display, or circulation of the videorecorded statement, the court may order that a copy of the videorecorded statement be given to the defense.

(9) If authorized by the prosecuting attorney in the county in which the videorecorded statement was taken, a videorecorded statement may be used for purposes of training the custodians of the videorecorded statement in that county on the forensic interview protocol implemented as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628.

(10) Except as provided in this section, an individual, including, but not limited to, a custodian of the videorecorded statement, the witness, or the witness's parent, guardian, guardian ad litem, or attorney, shall not release or consent to release a videorecorded statement or a copy of a videorecorded statement.

(11) A videorecorded statement that becomes part of the court record is subject to a protective order of the court for the purpose of protecting the privacy of the witness.

(12) A videorecorded statement shall not be copied or reproduced in any manner except as provided in this section. A videorecorded statement is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to release under another statute, and is not subject to disclosure under the Michigan court rules governing discovery. This section does not prohibit the production or release of a transcript of a videorecorded statement.

(13) If, upon the motion of a party made before the preliminary examination, the court finds on the record that the special arrangements specified in subsection (14) are necessary to protect the welfare of the witness, the court shall order those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court shall consider all of the following:

(a) The age of the witness.

(b) The nature of the offense or offenses.

(c) The desire of the witness or the witness's family or guardian to have the testimony taken in a room closed to the public.

(14) If the court determines on the record that it is necessary to protect the welfare of the witness and grants the motion made under subsection (13), the court shall order both of the following:

(a) All persons not necessary to the proceeding shall be excluded during the witness's testimony from the courtroom where the preliminary examination is held. Upon request by any person and the payment of the appropriate fees, a transcript of the witness's testimony shall be made available.

(b) In order to protect the witness from directly viewing the defendant, the courtroom shall be arranged so that the defendant is seated as far from the witness stand as is reasonable and not directly in front of the witness stand. The defendant's position shall be located so as to allow the defendant to hear and see the witness and be able to communicate with his or her attorney.

(15) If upon the motion of a party made before trial the court finds on the record that the special arrangements specified in subsection (16) are necessary to protect the welfare of the witness, the court shall order those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court shall consider all of the following:

(a) The age of the witness.

(b) The nature of the offense or offenses.

(c) The desire of the witness or the witness's family or guardian to have the testimony taken in a room closed to the public.

(16) If the court determines on the record that it is necessary to protect the welfare of the witness and grants the motion made under subsection (15), the court shall order 1 or more of the following:

(a) All persons not necessary to the proceeding shall be excluded during the witness's testimony from the courtroom where the trial is held. The witness's testimony shall be broadcast by closed-circuit television to the public in another location out of sight of the witness.

(b) In order to protect the witness from directly viewing the defendant, the courtroom shall be arranged so that the defendant is seated as far from the witness stand as is reasonable and not directly in front of the witness stand. The defendant's position shall be the same for all witnesses and shall be located so as to allow the defendant to hear and see all witnesses and be able to communicate with his or her attorney.

(c) A questioner's stand or podium shall be used for all questioning of all witnesses by all parties and shall be located in front of the witness stand.

(17) If, upon the motion of a party or in the court's discretion, the court finds on the record that the witness is or will be psychologically or emotionally unable to testify at a court proceeding even with the benefit of the protections afforded the witness in subsections (3), (4), (14), and (16), the court shall order that a videorecorded deposition of a witness shall be taken to be admitted at a court proceeding instead of the witness's live testimony.

(18) For purposes of the videorecorded deposition under subsection (17), the witness's examination and cross-examination shall proceed in the same manner as if the witness testified at the court proceeding for which the videorecorded deposition is to be used, and the court shall order that the witness, during his or her testimony, shall not be confronted by the defendant but shall permit the defendant to hear the testimony of the witness and to consult with his or her attorney.

(19) This section is in addition to other protections or procedures afforded to a witness by law or court rule.

(20) A person who intentionally releases a videorecorded statement in violation of this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

History: Add. 1987, Act 44, Eff. Jan. 1, 1988;—Am. 1989, Act 253, Eff. Mar. 29, 1990;—Am. 1998, Act 324, Imd. Eff. Aug. 3, 1998;—Am. 2002, Act 604, Eff. Mar. 31, 2003.

Civil Statute

MCLA 712A.17b Definitions; proceedings to which section applicable; use of dolls or mannequins; support person; notice; videorecorded statement; shielding of witness; videorecorded deposition; special arrangements to protect welfare of witness; section additional to other protections or procedures.

Sec. 17b. (1) As used in this section:

(a) "Custodian of the videorecorded statement" means the department of human services, investigating law enforcement agency, prosecuting attorney, or department of attorney general or another person designated under the county protocols established as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628.

(b) "Developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, except that, for the purposes of implementing this section, developmental disability includes only a condition that is attributable to a mental impairment or to a combination of mental and physical impairments, and does not include a condition attributable to a physical impairment unaccompanied by a mental impairment.

(c) "Videorecorded statement" means a witness's statement taken by a custodian of the videorecorded statement as provided in subsection (5). Videorecorded statement does not include a videorecorded deposition taken as provided in subsections (16) and (17).

(d) "Witness" means an alleged victim of an offense listed under subsection (2) who is either of the following:

(i) A person under 16 years of age.

(ii) A person 16 years of age or older with a developmental disability.

(2) This section only applies to either of the following:

(a) A proceeding brought under section 2(a)(1) of this chapter in which the alleged offense, if committed by an adult, would be a felony under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328.

(b) A proceeding brought under section 2(b) of this chapter.

(3) If pertinent, the witness shall be permitted the use of dolls or mannequins, including, but not limited to, anatomically correct dolls or mannequins, to assist the witness in testifying on direct and cross-examination.

(4) A witness who is called upon to testify shall be permitted to have a support person sit with, accompany, or be in close proximity to the witness during his or her testimony. A notice of intent to use a support person shall name the support person, identify the relationship the support person has with the witness, and give notice to all parties to the proceeding that the witness may request that the named support person sit with the witness when the witness is called upon to testify during any stage of the proceeding. The notice of intent to use a named support person shall be filed with the court and shall be served upon all parties to the proceeding. Court shall rule on a motion objecting to the use of a named support person before the date at which the witness desires to use the support person.

(5) A custodian of the videorecorded statement may take a witness's videorecorded statement. The videorecorded statement shall be admitted at all proceedings except the adjudication stage instead of the live testimony of the witness. The videorecorded statement shall state the date and time that the statement was taken; shall identify the persons present in the room and state whether they were present for the entire videorecording or only a portion of the videorecording; and shall show a time clock that is running during the taking of the statement.

(6) In a videorecorded statement, the questioning of the witness should be full and complete; shall be in accordance with the forensic interview protocol implemented as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628; and, if appropriate for the witness's developmental level, shall include, but need not be limited to, all of the following areas:

(a) The time and date of the alleged offense or offenses.

(b) The location and area of the alleged offense or offenses.

(c) The relationship, if any, between the witness and the respondent.

(d) The details of the offense or offenses.

(e) The names of other persons known to the witness who may have personal knowledge of the offense or offenses.

(7) A custodian of the videorecorded statement may release or consent to the release or use of a videorecorded statement or copies of a videorecorded statement to a law enforcement agency, an agency authorized to prosecute the criminal case to which the videorecorded statement relates, or an entity that is part of county protocols established under section 8 of the child protection law, 1975 PA 238, MCL 722.628. Each respondent and, if represented, his or her attorney has the right to view and hear the videorecorded statement at a reasonable time before it is offered into evidence. In preparation for a court proceeding and under protective conditions, including, but not limited to, a prohibition on the copying, release, display, or circulation of the videorecorded statement, the court may order that a copy of the videorecorded statement be given to the defense.

(8) If authorized by the prosecuting attorney in the county in which the videorecorded statement was taken, a videorecorded statement may be used for purposes of training the custodians of the videorecorded statement in that county on the forensic interview protocol implemented as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628.

(9) Except as provided in this section, an individual, including, but not limited to, a custodian of the videorecorded statement, the witness, or the witness's parent, guardian, guardian ad litem, or attorney, shall not release or consent to release a videorecorded statement or a copy of a videorecorded statement.

(10) A videorecorded statement that becomes part of the court record is subject to a protective order of the court for the purpose of protecting the privacy of the witness.

(11) A videorecorded statement shall not be copied or reproduced in any manner except as provided in this section. A videorecorded statement is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to release under another statute, and is not subject to disclosure under the Michigan court rules governing discovery. This section does not prohibit the production or release of a transcript of a videorecorded statement.

(12) Except as otherwise provided in subsection (15), if, upon the motion of a party or in the court's discretion, the court finds on the record that psychological harm to the witness would occur if the witness were to testify in the presence of the respondent at a court proceeding or in a videorecorded deposition taken as provided in subsection (13), the court shall order that the witness during his or her testimony be shielded from viewing the respondent in such a manner as to enable the respondent to consult with his or her attorney and to see and hear the testimony of the witness without the witness being able to see the respondent.

(13) In a proceeding brought under section 2(b) of this chapter, if, upon the motion of a party or in the court's discretion, the court finds on the record that psychological harm to the witness would occur if the witness were to testify at the adjudication stage, the court shall order to be taken a videorecorded deposition of a witness that shall be admitted into evidence at the adjudication stage instead of the live testimony of the witness. The examination and cross-examination of the witness in the videorecorded deposition shall proceed in the same manner as permitted at the adjudication stage.

(14) In a proceeding brought under section 2(a)(1) of this chapter in which the alleged offense, if committed by an adult, would be a felony under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328, if, upon the motion of

a party made before the adjudication stage, the court finds on the record that the special arrangements specified in subsection (15) are necessary to protect the welfare of the witness, the court shall order 1 or both of those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court shall consider both of the following:

(a) The age of the witness.

(b) The nature of the offense or offenses.

(15) If the court determines on the record that it is necessary to protect the welfare of the witness and grants the motion made under subsection (14), the court shall order 1 or both of the following:

(a) In order to protect the witness from directly viewing the respondent, the courtroom shall be arranged so that the respondent is seated as far from the witness stand as is reasonable and not directly in front of the witness stand. The respondent's position shall be located so as to allow the respondent to hear and see all witnesses and be able to communicate with his or her attorney.

(b) A questioner's stand or podium shall be used for all questioning of all witnesses by all parties, and shall be located in front of the witness stand.

(16) In a proceeding brought under section 2(a)(1) of this chapter in which the alleged offense, if committed by an adult, would be a felony under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328, if, upon the motion of a party or in the court's discretion, the court finds on the record that the witness is or will be psychologically or emotionally unable to testify at a court proceeding even with the benefit of the protections afforded the witness in subsections (3), (4), and (15), the court shall order that a videorecorded deposition of a witness shall be taken to be admitted at the adjudication stage instead of the witness's live testimony.

(17) For purposes of the videorecorded deposition under subsection (16), the witness's examination and cross-examination shall proceed in the same manner as if the witness testified at the adjudication stage, and the court shall order that the witness, during his or her testimony, shall not be confronted by the respondent but shall permit the respondent to hear the testimony of the witness and to consult with his or her attorney.

(18) This section is in addition to other protections or procedures afforded to a witness by law or court rule.

(19) A person who intentionally releases a videorecorded statement in violation of this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

History: Add. 1987, Act 45, Eff. Jan. 1, 1988;—Am. 1989, Act 254, Eff. Mar. 29, 1990;—Am. 1998, Act 325, Imd. Eff. Aug. 3, 1998;—Am. 2002, Act 625, Eff. Mar. 31, 2003.

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QUANTITY: 3,000
COST: \$2,939.87 (\$.97 ea.)
AUTHORITY: DHS Director

The Department of Human Services (DHS) will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, political beliefs or disability. If you need help with reading, writing, hearing, etc., under the Americans with Disabilities Act, you are invited to make your needs known to a DHS office in your county.

APPENDIX D
FOSTER PARENT REVIEW HEARING REPORT

(Child's attorney to complete and return to the Court seven days prior to the scheduled hearing.)

FOSTER PARENT REVIEW HEARING REPORT

Child's Name: _____ File # _____

Foster Parents' Name/Address: _____

Phone # _____

Names/Relationships of others living in your home: _____

Date foster child was placed with you: _____

Agency/social worker name: _____

Please answer the following and add any comments you wish the Court to consider:

1) Have you received a copy of the Case Service Plan?
☐ Yes ☐ No Comments: _____

2) Do you understand the child's Case Service Plan?
☐ Yes ☐ No Comments: _____

3) Do you feel the child's Case Service Plan needs any changes?
☐ Yes ☐ No Comments: _____

4) Have you been consulted regarding any changes in the Case Service Plan?
☐ Yes ☐ No Comments: _____

5) Is the child receiving all the needed services?
☐ Yes ☐ No Comments: _____

6) Are you receiving adequate support and assistance from the assigned social worker?
☐ Yes ☐ No Comments: _____

- 7) Are there any existing problems regarding the child's placement?
☐ Yes ☐ No Comments:
- 8) What perceptions of the child might be relevant to the Review Hearing?
- 9) What are your feelings and observations regarding the child's contacts and visitation with the natural parents?
- 10) Do you wish any additional service from the Court?
☐ Yes ☐ No Comments:
- 11) Are you willing to continue as foster parents for the child?
☐ Yes ☐ No Comments:
- 12) Additional comments or information:

Foster Parent Signature

Attorney Signature

Date Completed: _____

APPENDIX E
QUALIFIED PROTECTIVE ORDER

STATE OF MICHIGAN
CIRCUIT COURT, FAMILY DIVISION
JUVENILE DEPARTMENT

In the matter of:

File No:

Minor Child

QUALIFIED PROTECTIVE ORDER

The guardian ad litem has the authority to consent to the disclosure of information that pertains to medical, dental, psychological, and psychiatric or counseling services provided to his or her client(s). The guardian ad litem also has authority to consent to examination or treatment of the client(s). This authority begins with authorization of the petition and ends with the order terminating court jurisdiction over the client(s).

Information disclosed to a guardian ad litem pursuant to this order shall not be used or redisclosed by the guardian ad litem other than for purposes of this case.

Information disclosed to a guardian ad litem pursuant to this order shall be returned to the individual or organization who disclosed it to the guardian ad litem upon dismissal of this case.

Any parent who objects to the disclosure of information to the guardian ad litem must file a written objection with this court within twenty-one (21) days of the date of this order.

A service provider may rely upon the Qualified Protective Order in commencing services or releasing records irrespective of the 21-day time period for the filing of written objections under this order.

Dated:

MICHAEL J. ANDEREGG
Presiding Judge

APPENDIX F
APPLYING THE REALITIES OF CHILD DEVELOPMENT TO LEGAL
REPRESENTATION:
A QUICK REFERENCE FOR LAWYERS AND JUDGES

**Applying the Realities of Child Development to Legal Representation:
A Quick Reference for Lawyers and Judges**

*By: Brian T. Donadio, J.D.
and Sondra R. Wilen, M.A.*

Brian Donadio graduated cum laude from the University of Michigan Law School in December 1998. Brian will be a law clerk for the Honorable Jay C. Waldman of the United States District Court for the Eastern District of Pennsylvania during the 1999-2000 term and will then join the Philadelphia office of Dechert, Price & Rhoads. Brian is a 1994 honors graduate of the University of Pennsylvania (B.A. Political Science). Before attending law school he worked in Lansing, Michigan, as a recruitment coordinator for a literacy agency and an English as a Second Language instructor for Cuban refugees. While in law school, Brian served as Symposium Editor for the University of Michigan Journal of Law Reform and began studying and working with child law issues at the University of Michigan Child Advocacy Law Clinic, the Michigan Child Welfare Law Resource Center and the Washtenaw County Prosecutor's Office.

INTRODUCTION

Whether a legal matter involves a delinquency adjudication, an abuse and neglect investigation, or even a child custody dispute, determining whether a child is developing at a normal rate—physically, intellectually, and emotionally—is often¹ an important consideration in ascertaining the best method of vigorously and effectively representing a child client. It is also expected that an attorney will have neither the time nor the expertise to conduct an evaluation of the child client's development that is thorough enough to provide adequate information for effective representation. In many cases, this lack of time and expertise will not be an issue because the child client falls within a normal range of development; thus, developmental concerns would not be an impediment to representation. Often, however, the development of a child—physical, emotional, or otherwise—may play an important role in the case and thus inattention to developmental factors could impede the attorney's ability to represent the child adequately. These concerns apply equally to judges—whether sitting in family court

or in a court of general jurisdiction—when a pending case involves the interests of a child. It is therefore important for attorneys and judges alike to recog-

Sondra Wilen is currently a doctoral student in child and family clinical psychology at Michigan State University. Sondra earned her Master's degree in clinical psychology in December 1997. She also graduated summa cum laude and Phi Beta Kappa with undergraduate degrees in psychology and business from the University of Pennsylvania and Penn's Wharton School of Business. Sondra's research and clinical practice is concentrated on child and family therapy issues, particularly attachment theory and adolescent depression and suicidality. Before attending graduate school, Sondra worked as a Pennsylvania/VA Medical Center Addiction Treatment Research Center. Sondra has previously presented research posters at the Annual Meeting of the Society for Research in Adolescence and the Annual Convention of the American Psychological Association.

nize when issues of child development arise that significantly impact a case, thus necessitating consultation and assessment by psychological professionals.

Before sketching the basic developmental milestones and important deviations, it is important to highlight the purpose of this article. This article is an attempt to provide attorneys and judges with a rudimentary understanding of developmental issues likely to arise in cases involving children. Consideration of a child's level of development is important because there are such significant "moral, cognitive, and social development" differences between adults and children.² These differences can affect a child's culpability in a delinquency matter; the degree of immediacy when considering the need for removal of a child from the home in an abuse and neglect case; and the appropriateness of any given placement in child custody litigation. The study of child development is by no means a novel or unexplored field, but rather it is a science that has been studied widely and thoroughly for many years.³ Thus, attorneys and judges should give serious consideration to child development issues and make certain to consider professional consultation and evaluation in cases where a child's development appears to deviate from the norm.

Keep in mind that this article is by no means an exhaustive undertaking. In fact, this article endeavors only to be a sort of summary of the summaries, a most pared down coverage of the issues aiming to raise awareness and provide a starting point for what should be a more comprehensive research and education effort by attorneys and judges involved in child-related legal issues. Thus, the information provided here can serve only as the initial reference in what will turn out in many cases to be a series of evaluations in an effort to locate the precise nature of a particular psychological or developmental problem.

I. The Initial Assessment by the Attorney:

A Guideline to Recognizing Basic Developmental Milestones

Because time and resources are at a premium in most cases involving a child's interest—again, most attorneys typically have neither the time nor the training to complete an effective battery of evaluative measures—there is a need for an abbreviated, easy-to-use method of evaluation. To that end, a summary of child developmental milestones and deviations from the norm may prove helpful. Several categories of development have been included here as an initial reference; however, the informa-

tion provided here is far from complete—it is intended only to suggest the types of developmental milestones children are expected to attain. It is important to keep in mind, therefore, that there often exists the need for *careful, intensive* interviews when deviations from the norm are discovered; this is particularly so when dealing with juvenile delinquency clients or children in abuse and neglect cases.⁴ Thus, it is recommended that any "positive" results in a "checklist" evaluation be followed up, preferably either through a complete evaluation, such as a *pro bono* or court-mandated assessment by a psychological/psychiatric professional.⁵

When assessing the child for deviations from normal development, consider the following techniques:

- Whenever possible, conduct interviews with the child client and parents, as well as others who may have additional information, such as teachers, day care providers, neighbors, parents of friends, close relatives, or even alleged abusers in abuse/neglect cases. Teachers and day care providers are especially important sources of information because they observe the child on a regular basis, have a large number of children

against which to compare development, and may be less likely to have an interest in minimizing concerns than parents or others who may fear blame for developmental problems.

- Ask questions⁶ and make observations about issues such as, but not limited to the following: prenatal medical care; motor skills, including mobility and physical coordination; medical problems (including untreated daily concerns such as regular headaches); school performance; relations with friends and family members; home environment (e.g., parental employment, parental physical or psychological problems, who and how many caregivers); hobbies and interests; general temperament (e.g., cranky, outgoing, calm, timid), mood or feelings; fears or worries; self-concept (e.g., what the child likes best and worst about herself, how the child views herself in relation to others); memories or fantasies; future goals; assessments or diagnoses by other professionals (including educational assessments at school or placement in special classes); and involvement with the legal system, protective services, or mental health agencies.⁷

- Pay special attention to signs such as aggressive antisocial actions, pervasive isolation, self-harm, precocious sexual activity, age-inappropriate problems with reality (e.g., hearing voices or paranoia), substance use, delayed language and physical development, low self-esteem, lack of trust, inept interpersonal relationships, learning difficulties, phobias, nightmares, and excessive clinging or avoidance of closeness.⁸

- Diligently collect and review records, such as medical, school, employment and mental health.

II. Important Milestones of Cognitive/Language and Social/Emotional Development⁹

Birth - 12 Months¹⁰

Cognitive/ Language¹¹

Imitation of adult expressions and repetition of unintentional actions leads to purposeful, causal behaviors; recognition of people, places, objects begins; object permanence (understanding that objects continue to exist when removed from sight) transitions to ability to find hidden objects (but only in the first place hidden); cooing and babbling followed by imitation of language sounds; development of commu-

nication of dependency, exploration, pleasure, anger, fear, and anxiety through nonverbal gestures (e.g., pointing, facial expressions).

Emotional/ Social¹²

Basic emotions apparent (happiness, anger, fear, surprise, sadness), focused first on internal needs (hunger) and later toward external cues (parental ability to make hungry child smile); emergence of fear of stranger and anxiety about separation from the primary caregiver; engagement and interactive relationship with caregivers and others, including intentional, social smiles and laughter (rather than spontaneous smiles caused by physiological factors such as gas); appears bonded/attached to primary caregivers; shows interest in exploring while looking to caregiver for support and encouragement (as a "secure base").

12 - 24 months

Cognitive/ Language

Shows interest in trial and error experimentation with objects and problem solving; looks in additional places when hidden object not found in first hiding place; able to find object moved when outside the child's field of vision; categorizes objects (e.g., cat, drinking cup); begins make-believe play; first words spoken,

with vocabulary gradually increasing to about 200 words.

Emotional/ Social

Begins playing with siblings and same age children; recognizes images of self; security and curiosity replace clinginess and apprehension about novel situations; signs of empathy, shame, and embarrassment emerge; recognizes age/sex categorizations and begins to choose toys based on gender stereotypes; compliance with requests leads to improved self-control; begins to organize opposing emotions in singular situations (e.g., when playing, "the doll is bad, gets spanked, and then is hugged").

Age 2

Cognitive/ Language

Recognition memory developed; able to take perspective of others in simple situations; cognizant of difference between inner mental and outer physical events; rapid vocabulary increase leads to understanding of simple sentences, ability to name many objects, and use of simple sentences following proper grammatical order; conversational abilities grow to include taking turns in dialogue and maintaining singular topic.

Social/ Emotional

Self-esteem begins to develop; understands intentional

versus unintentional behavior; cooperation emerges; understanding of causes and consequences of emotions begins to develop; ability to deal with anxiety through fantasy appears (e.g., thoughts that things will change for the better in the future); continued development of empathy and gender stereotyped behaviors and preferences; themes of "power" emerge (e.g., fear of monsters, desire to be a superhero).

Age 3-4

Cognitive/ Language

Begins to understand the concept of causation in relation to action; speaks to self to guide complex actions; understanding of fantasy and false belief emerges; able to speak in more complex sentences (e.g., using "but" and "because" to qualify or explain actions or events); counting and numerical skills begin to emerge; begins to grasp grammar rules and the existence of exceptions; able in many instances to adjust speech for age, sex, and social standing (e.g., parent/adult versus sibling) of the listener.

Social/ Emotional

Continued growth of self-consciousness (shame and pride) and ability to regulate emotions, including reactions to frustration; social interactions increase with corresponding decrease of iso-

lated play; emergence of "normal" levels of hostile physical and verbal aggression (occasional aggressive exchange between young children, even where the intention is to harm another child, so long as aggressive episodes are far outweighed by friendly interactions), as well as jealousy and envy; continued increase of gender-stereotypical preferences, including playmates; anxiety about being hurt of kidnapped is common, but child usually is able to recognize such thoughts as fantasy.

Age 5-6

Cognitive/ Language

Understanding of difference between reality and mere appearance improves; attention capacity enhanced; begins to understand basic phonics; vocabulary grows to approximately 10,000 words; shows complex grammar mastery; counting improves and expands to basic addition and subtraction.

Social/ Emotional

Increasing comprehension of intentions underlying actions of others; shows ability to predict and interpret and provoke actions and emotions of others; exhibits fears such as thunder and lightening, dark, bodily injury, loss of love, and the supernatural (e.g., ghosts); uses language to express empathy; understands moral basis of many rules and

behaviors; strong ability to regulate both concentration/attention and emotion tempered by continuing need for external support with such efforts; able to fear loss of self-esteem (e.g., "I am bad"); triangular patterns of relationships present (i.e., feeling left out or wanting to leave others out of situations).

Age 6-11

Cognitive/ Language

Logical thought improves but remains connected to concrete, rather than abstract situations; improved understanding of spatial concepts such as time, distance, and speed; ability to maintain attention and focus improves (and is very well established by age 8 or 9), thus enhancing understanding of the role of memory, attentiveness, and motivation to the successful performance of tasks; long-term memory and knowledge accumulation grows; rapid addition of vocabulary; complex grammar application steadily improves, especially around age 10 or 11 (e.g., "I did this because she said that, and she said that because something else happened that I did not see."); use of synonyms/ word categories and double word meanings present (e.g., metaphors and humor).

Social/ Emotional

Self-esteem becomes more realistic and gradually rises,

while understanding of personality traits of self and others grows; fears of the dark, thunder/lightening, bodily injury, loss of love, and the supernatural continue, with the last dissipating and being replaced by anxiety about shame in contests such as tests and grades in school and physical appearance; ability to differentiate between luck and skill emerges; able to grasp the need for effort, self control, and frustration tolerance in task performance; understands that individuals have different perspectives on events based on differing knowledge; concept of justice changes from equality to merit (ability to earn benefits) to benevolence (willingness to bestow benefit out of the goodness of one's heart); physical aggression declines as social interaction increases, leading to the formation of peer groups and a growing interest in "roles" (self-definition such as "I am a football player" or "I am good at this"); associates pride and guilt with personal responsibility (and experiences a growing fear of guilt); recognizes connection between morality and social norms but sense of morality remains unstable; begins to temper spontaneous curiosity with growing sense of order, including order necessary for appropriate interactions with others (e.g., playing games with rules); academic interests and personality traits become gender-stereotyped and focused on role models (adult stereotypes); by age 9 or 10, spe-

cial relationships with same sex parent is strong (parent used as a role model).

Age 11-14

Cognitive/ Language

Abstract/hypothetical thought emerges; self-consciousness continues to grow; critical and idealistic thought grow substantially; begins to consider long-term vocational goals based on present interests; abstract vocabulary appears; irony and sarcasm understood; understanding of the need to manipulate speech patterns and style based on individual situations grows.

Social/ Emotional

Parent-child conflict increases commensurate with moodiness and further transition from family social interaction to focus on peer involvement; intimacy and loyalty begin to define friendships; "membership" in cliques becomes more standard, with self-definition focused increasingly on reputation and stereotypes; need to conform to peer pressure is prominent.

Age 14-18

Cognitive/ Language

Problem solving increasingly based on complex rules of thought; abstract/hypothetical reasoning improves substantially; self-consciousness sub-

sides; planning and decision making enhanced; long-term vocation goals now based on abilities and values in addition to interests; verbal skills advanced to ability to comprehend adult literature.

Social/ Emotional

Search for a personal identity/self-definition commences; self-esteem continues to rise and differentiate with regards to different situations; growing understanding of the societal perspective and the importance of laws and rules to the maintenance of relationships and societal order; dating often begins.

III. Deviations from Normal Development

When considering whether a child has attained an age-appropriate level of development, the attorney or judge must look not only to the apparent indications of normal development, but also to certain reliable indicators of abnormal development. Factors associated with a deviation from normal development include negative life events, such as physical or sexual abuse; chronic stress caused by domestic violence or marital discord; parental psychopathology/mental illness, such as depression or substance abuse; and the availability of parental "resources," including friendships and extended

family relations.¹³ There exists a large number of possible psychological problems resulting from or appearing as deviation from normal development. Included here is a brief description of some of the more common problems (Attention Deficit-Hyperactivity Disorder; Conduct Disorder; Mood Disorders, such as Major Depression; and Anxiety Disorders) and some representative deviations from normal development.

1. Attention Deficit-Hyperactivity Disorder (ADHD)¹⁴

ADHD is often evidenced by some combination of the following signs:

- Persistent inattention to school work, tasks at home, or play;
- Failure to listen when spoken to directly;
- Disorganization, persistently losing things such as toys or school books, or forgetfulness;
- Easily distracted or excessive movement/restlessness that is not age-appropriate;¹⁵
- Excessive talking;
- Inability to await turn or participate in games or conversations without interrupting.

2. Conduct Disorder¹⁶

Conduct disorder holds a close relationship to juvenile de-

linquency and is evidenced in part by a repetitive and persistent pattern of behaviors, such as the following:

- Aggression toward people or animals, including physical cruelty or threats and intimidation;
- Deliberate destruction of property;
- Deceitfulness or theft;
- *Serious* violations of rules, such as curfews or school attendance.

3. Mood Disorders (including Major Depression and bipolar disorder)¹⁷

Signs of Major Depression¹⁸ include the following:

- Subjective reports of sadness or feelings of emptiness;
- (note that this factor is not necessary for children and adolescents because chronic irritability may be another manner in which they present depression);
- Objective observations by others of persistent tearfulness;
- Changes in weight, appetite, or sleep patterns;
- Fatigue or loss of energy/interest in activities;
- Reoccurring thoughts of death or self-harm.

4. Anxiety Disorders (including Generalized Anxiety and Obsessive-Compulsive Disorder)¹⁹

Certain deviations from normal development may indicate that the child suffers from a psychological problem that falls within the category of Anxiety Disorders. Such deviations include the following:

- Excessive anxiety concerning separation from the home or from caregivers;²⁰
- Excessive fear and avoidance of social situations;²¹
- Excessive concerns about performance or competence;²²
- Excessive generalized or specific fears or worry.²³

CONCLUSION

The possible impact of a child client's development on the outcome of a case cannot be overstated. Deviations from normal development can be either the cause or the effect of the subject matter of a particular case: the "delinquent" child's slow development may lead him to act in some way because he does not completely understand the consequences of his actions; abuse or neglect might result in some abnormality in development; a child's proper custodial placement may rely on the relative capacities of the contending caregivers to administer to a

child's need; the comparison of a child client's development with "normal" milestones may even assist a trier of fact in determining the damages at issue in tort litigation.

The importance of child development in so many areas of law suggests that attorneys, whether in a representative capacity or sitting on the bench, must be aware of the basic milestones and common deviations from those norms. Hopefully, this article not only will provide a bare bones reference for child development norms, but also will motivate the reader to pursue more comprehensive treatment of this subject matter elsewhere.

¹At least, it certainly should be.

²See Elizabeth S. Scott & Thomas Grisso, *The Evolutions of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137, 174 (1997).

³This is especially so with regards to the impact of developmental issues on older children and adults. There is, however, a continually growing focus on young child development, as well as a corresponding increase in interest in early diagnosis and intervention in cases of developmental deviance or disability. See Jan L. Culbertson & Diane J. Willis, *Introduction to Testing Young Children*, in TESTING YOUNG CHILDREN: A REF-

ERENCE GUIDE FOR DEVELOPMENTAL, PSYCHO-EDUCATIONAL, AND PSYCHOSOCIAL ASSESSMENTS 1 (Jan L. Culbertson & Diane J. Willis eds., 1993).

The Product of such study has been the emergence of two primary perspectives regarding the nature of child development. See Mary L. Perry & Cecil R. Reynolds, *Developmental Theory and Concerns in Personality and Social Assessment of Young Children*, in TESTING YOUNG CHILDREN: A REFERENCE GUIDE FOR DEVELOPMENTAL, PSYCHO-EDUCATIONAL, AND PSYCHOSOCIAL ASSESSMENTS 1 (Jan L. Culbertson & Diane J. Willis eds., 1993) (noting the conflicting concepts of continuous and discontinuous development); LAURA E. BERK, *INFANTS, CHILDREN AND ADOLESCENTS 6-7* (2d ed. 1996) (same). For a more in-depth but introductory level discussion of competing theories on child development, it is best to turn to one of the many texts on the subject. See, e.g., HELEN BEE, *THE DEVELOPING CHILD 3-27* (6th ed. 1992); BERK, *supra* note 3, at 2-32; HOWARD GARDNER, *DEVELOPMENTAL PSYCHOLOGY 493* (2d ed. 1982) (summarizing theory labels and directing to relevant portions of text); JEROME M. SATTLER, *ASSESSMENT OF CHILDREN 37-59* (3D ED. 1992). One perspective considers child development to be a discontinuous series of step-like changes in the child. These changes are often referred to as stages. See Perry & Reynolds, *supra* note 3, at 31-38 (discussing Jean Piaget's cognitive

development stages, Sigmund Freud's psychosexual stages, and Erik Erikson's psychosocial stages of ego development). The contrary foundational theory on development is that a child grows and matures in a continuous, "ever-evolving" manner. See Perry & Reynolds, *supra* note 3, at 38-41 (discussing Bandura and social learning theory, life-span perspectives, and interactional systems approach).

The primary categories of child development have been labeled variously as physical, motor skills/coordination, educational, intellectual, language, social, emotional, and moral. See Culbertson & Willis, *supra* note 3, at 7; See generally BERK, *supra* note 3. This article will focus on the combined areas of development known as cognitive/language and social/emotional. However, it is also worth taking some time to become acquainted with the physical and sensorimotor areas of development. See, e.g., STANLEY I. GREENSPAN, *THE CLINICAL INTERVIEW OF THE CHILD* 61-77 (2d ed. 1991); Nancy Bayley, *The Development of Motor Abilities During the First Three Years*, 1 MONOGRAPHS OF THE SOCIETY OF RESEARCH IN CHILD DEVELOPMENT (1935).

⁴For example, when preparing a delinquency defense, it is "vital when evaluating violent children... to obtain a comprehensive history of perinatal difficulties, accidents, injuries and illnesses." Pavlos Hatzitaskos et al., *The Documentation of Central Nervous System Injuries in Violent Offenders*, JUV. & FAM. CT. J. 29, 30 (1994).

⁵For an authoritative discussion of clinical assessment models and methods likely to be used by the psychological professional conducting a child client's psychological/developmental assessment, See SATTLER, *supra* note 3. See also MICHAEL J. BREEN & THOMAS S. ALTEPETER, *DISRUPTIVE BEHAVIOR DISORDERS IN CHILDREN* 65-163 (1990) (discussing questionnaires, measurement devices, observation techniques, and treatments for behavior disorders such as, attention deficit hyperactivity disorder, conduct disorder, and oppositional defiant disorder); TESTING YOUNG CHILDREN: A REFERENCE GUIDE FOR DEVELOPMENTAL, PSYCHOEDUCATIONAL, AND PSYCHOSOCIAL ASSESSMENTS 1 (Jan L. Culbertson & Diane J. Willis eds., 1993).

⁶Make certain to inquire about the past in addition to the current state of each category.

⁷See, e.g., BREEN & ALTEPETER, *supra* note 5, at 221-225; GREENSPAN, *supra* note 3, 229-230; SATTLER, *supra* note 3, at 418-19, 426-27, 440-41; Joel Nigg, What to Consider in a Child Assessment (March 1, 1997) (unpublished assessment guide, on file with authors).

⁸See Brandt F. Steele, *The Psychology of Child Abuse*, 17 WTR FAM. ADVOC. 19, 22 (1995).

⁹Consider also a thorough chart compiled by Dr. Greenspan illustrating age-appropriate physical functioning (neurological, sensory,

and motor), relationship patterns, emotional states, and affects/expressions for children ages birth through ten years. See GREENSPAN, *supra* note 3, at 61-77.

¹⁰For a more elaborate discussion of prenatal and infant development, See, for example, George W. Hynd & Margaret Semrud-Clikeman, *Developmental Considerations in Cognitive Assessment of Young Children*, in TESTING YOUNG CHILDREN: A REFERENCE GUIDE FOR DEVELOPMENTAL, PSYCHO-EDUCATIONAL, AND PSYCHOSOCIAL ASSESSMENTS 1 (Jan L. Culbertson & Diane J. Willis eds., 1993).

¹¹The information compiled in the cognitive/language section is a mere fraction of that found in a number of authoritative texts. See e.g., BEE, *supra* note 3, at 205-336; BERK, *supra* note 3, at 208-245, 312-351, 420-463, 546-581; GARDNER, *supra* note 3, at 67, 167; GREENSPAN, *supra* note 3, at 61-77.

¹²The information compiled in this list of emotional/social milestones is also a small, but representative portion of that found in a number of texts. See e.g., BERK, *supra* note 3, at 246-283, 352-393, 464-507, 582-623; BEE, *supra* note 3, at 337-488; GARDNER, *supra* note 3, at 462, 468, 523 (addressing, among other theories, Damon's authority and obedience recognition and Kohlberg's moral reasoning); GREENSPAN, *supra* note 3, at 61-77.

¹³See Perry & Reynolds, *supra* note 3, at 43-48.

¹⁴See AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 83-85 (4th ed. 1994) (hereinafter DSM-IV). ADHD is found in approximately three to five percent of school-age children. See *id.* at 82. For a discussion of the etiology and developmental course of attention deficit hyperactivity disorder, See BREEN & ALTEPETER, *supra* note 5, at 11-23.

¹⁵For example, it would be age-appropriate for a two year-old child to become restless or attempt to move around when asked to sit still for hours at a time.

¹⁶See DSM-IV, *supra* note 14, at 90-91. Conduct disorder is found in six to sixteen percent of boys and two to nine percent of girls. *Id.* For a discussion of the etiology and developmental course of conduct disorder, including associated aggression and delinquency, See BREEN & ALTEPETER, *supra* note 5, at 23, 33-37.

¹⁷Twenty to 35 percent of adolescents experience a mild level of depression, while twelve to fifteen percent become moderately depressed, and five percent endure a severe bout of depression. See BERK, *supra* note 2, at 610.

¹⁸See DSM-IV, *supra* note 14, at 327.

¹⁹Approximately twenty percent of children develop an extreme

anxiety. See BERK, *supra* note 2, at 496.

²⁰See DSM-IV, *supra* note 14, at 110.

²¹See DSM-IV, *supra* note 14, at 413.

²²See DSM-IV, *supra* note 14, at 434.

²³See DSM-IV, *supra* note 14, at 407, 435.

Related Readings:

Promoting Positive Relationships Between Parents and Young Children When There are Two Homes (1996) is a 43 page 5" x 8" pamphlet directed at divorcing parents of infants and toddlers. It should be read not only by divorcing parents but also by judges and friends of the court who need to be aware of the impact of their decisions on the well-being of very young children.

The content

- outlines the importance of relationships for the normal development of very young children
- indicates what parents need to provide for emotional growth at various ages
- makes suggestions about parenting when the child spends time in two homes
- describes what behavior is

characteristic of infant/toddlers at three ages (0-6 months, 7-18 months, and 19-36 months)

- provides guidelines for recommended length and frequency of contact at various ages

Three types of situations are outlined and recommendations made for each level and age:

- transitional situations where the child and/or parents are not prepared to handle typical shared parenting time, where there has been little previous contact, young children who are particularly sensitive to change, or parents who are experiencing difficulty with communication and teamwork
- typical readiness of most parents and children
- exceptional situations in which parental teamwork and child resilience are strong.

Overnights and contacts for more than 8 hours are not recommended for infants and toddlers under 18 months of age.

An appendix summarizes determination of custody and parenting time under the Child Custody Act and the role of the friend of the court. Selected readings for parents and for professionals are included.

Copies may be obtained for \$2 each from Children's Charter of the Court of Michigan, 324 N Pine Street, Lansing, MI 48933. Tel: (517) 482-7533.

Guidelines For Assessing Parenting Capabilities In Child Abuse And Neglect Cases (1985) is directed at court-ordered as-

sessments with respect to custody. Although relevant for any such assessment, the guidelines were developed with special reference to infants of parents with mental illness and mental impairment. Currently under revision, this 28 page 8" x 11" pamphlet covers court procedure, the needs of an infant and relevant parenting capabilities, and the

assessment process. The questions to be asked to determine risk to the infant are outlined and the criteria for recommending termination of parental rights stated. A checklist is provided.

Copies may be obtained for \$5 each from Michigan Association for Infant Mental Health, Kellogg Center #27, Michigan State University, East Lansing, MI 48824. Tel: (517) 432-3793.

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